

Part II: Item suggested for discussion with the press and public excluded

TOWN POLICE CLAUSES ACT 1847 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

- 4 **APPLICATION FOR THE RENEWAL OF A PRIVATE HIRE VEHICLE LICENCE FOR A VEHICLE OVER EIGHT YEARS OLD (MR T.G.)** 1 - 8

To consider the report of the Head of Environmental Health Services.

(Report circulated to Members)

Part I : Items suggested for discussion with the press and public present

LICENSING ACT 2003

- 5 **APPLICATION FOR A GRANT OF A TEMPORARY EVENTS NOTICE - HOLE IN THE WALL, LITTLE CASTLE STREET, EXETER** 9 - 26

To consider the report of the Head of Environmental Health Services.

(Report circulated)

- 6 **REVIEW OF PREMISES LICENCE - THE FLYING HORSE PUBLIC HOUSE, WONFORD** 27 - 110

To consider the report of the Head of Environmental Health Services.

(Report circulated)

Membership of the Sub-Committee will be drawn from the following members of the Licensing Committee:-

Councillors Branston, S Brock, Cole, Mrs Danks, Gale, Newby, Noble, Shiel, R Smith, Sterry, Thompson and Wadham

Individual reports on this agenda can be produced in large print on request to Member Services on 01392 265107.

Agenda Item 4

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

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Agenda Item 5

Principal Licensing Officer
Exeter City Council
Civic Centre
Paris St
EXETER EX

Licensing Officer
Heavitree Rd Police Station
Heavitree Rd
EXETER
EX1 2LR

25 November 2009

Dear Mr Ley

**Objection - Temporary Event Notices
Hole in the Wall - Alan Lillis**

I write with regard to a Temporary Event Notice served on Police on 24 November 2009. The TEN would allow the sale of alcohol, regulated entertainment and late night refreshment during the following times:
Saturday 19 December 02:00-03:00
Sunday 20 December 02:00-03:00.

With reference to Licensing Act 2003, Section 104(2) I hereby give notice that the Police consider allowing the premises to be used in accordance with the notice would undermine the crime prevention objective and therefore object to this Notice. We believe that there is a potential for increased incidents of alcohol fuelled crime and disorder should the hours for the sale of alcohol at these premises be extended as above.

It is our view that the Licensing Authority should be made aware of our concerns relating to crime and disorder, in order to consider whether this two events should go ahead. The Hole in the Wall falls within the Cumulative Impact Zone for Exeter and we trust the committee will have due regard to this fact when reaching their decision.

Please note that we are in consultation with Mr Lillis and it is likely an agreement will be reached that will lead to our objection being withdrawn. I shall notify you if this proves to be the case. Should you have any query, or require any further information please do not hesitate to contact me.

Yours sincerely

Lesley Carlo
Licensing Officer – Exeter

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**EXETER CITY COUNCIL
LICENSING ACT 2003**

NOTICE OF HEARING BEFORE A LICENSING SUB-COMMITTEE

Date: 26 November 2009
Name: Devon and Cornwall Constabulary.
Address: Heavitree Rd. Police Station
Heavitree Rd.
EXETER
EX1 2LR

Case Number:

Application: By: John Gaunt Solicitors on behalf of the Hole in the Wall
Of: Little Castle Street Exeter EX4 3PX
Re: TEMPORARY EVENT NOTICE

PLEASE NOTE that the hearing of this application will be heard by the licensing sub-committee sitting

AT: The Civic Centre, Paris Street, Exeter

AT: 09.30

ON: Thursday 3 December 2009



Principal Licensing Officer

N.B. Because you have made written representations against this application, you are now a party to the proceedings and **you should respond to this notice if you wish to address the sub-committee.** Please turn to page 2 which explains how and by when you should respond.

Please notify the licensing authority if you have any special needs or requirements for the hearing or if you will have any difficulty in attending.

ADDRESS ALL CORRESPONDENCE TO:

The Principal Licensing Officer, Civic Centre, Paris Street, Exeter EX1 1JN
Tel: 01392 265434 Fax: 01392 265853 E-mail: licensing@exeter.gov.uk

RESPONSE TO NOTICE OF HEARING

You are required by Regulation 8 of The Licensing Act 2003 (Hearings) Regulations 2005 to give the Senior Licensing Officer a notice:-

- a) stating whether you consider a hearing to be unnecessary;
- b) stating whether you intend to attend and/or be represented at the hearing; and
- c) requesting permission if you wish any other person to appear at the hearing, stating that person's name and giving a brief description of the point(s) on which that person may be able to assist the licensing sub-committee in relation to your application, representations or objection (as applicable).

PLEASE SEND THIS INFORMATION TO:

The Senior Licensing Officer, Civic Centre, Paris Street, Exeter EX1 1JN
Tel: 01392 265434 Fax: 01392 5853 E-mail: licensing@exeter.gov.uk

TO ARRIVE BY NO LATER THAN: Tuesday 1 December 2009

Accompanying this notice you will find information about the licensing sub-committee hearing procedure together with copies of any documents which have to be disclosed to you prior to the hearing.

In the interests of all those attending the hearing, the sub-committee requests that each party limit any oral submissions to a maximum time of 20 minutes. During such submissions, the sub-committee will expect you to provide clarification on the following particular point(s):-

**[insert any points which require clarification]*

**EXETER CITY COUNCIL – LICENSING ACT 2003
PROCEDURE AT LICENSING SUB-COMMITTEE HEARINGS
INFORMATION FOR PARTIES**

References in these notes to “the Act” are to the Licensing Act 2003 and references to “the Regulations” are to The Licensing Act 2003 (Hearings) Regulations 2005.

1. Right of attendance, assistance and representation

You may attend the hearing and be assisted or represented by any person whether or not that person is legally qualified. This right is subject to the licensing authority’s right to exclude any person from a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing taking place in public.

2. Representations and supporting information

At the hearing you will be entitled:-

- a) to address the sub-committee;
- b) to give further information in support of your application, representations or notice (as applicable) in response to any point(s) upon which the licensing authority has advised that you will be required to provide clarification (see page 2 above); and
- c) if given permission by the sub-committee, to question any other party.

3. Consequences if you fail to attend or be represented

- 3.1 If you inform the licensing authority that you do not intend to attend or be represented at the hearing, the hearing may proceed in your absence.
- 3.2 If you do not so inform the licensing authority and then fail to attend or be represented at the hearing, the hearing may either be adjourned to a specified date or be held in your absence.
- 3.3 Where the hearing is held in your absence, the sub-committee will consider your application, representations or notice (as applicable).
- 3.4 Where the hearing is adjourned to a specified date you will be notified of the date, time and place to which the hearing has been adjourned.

4. Procedure to be followed at the hearing

- 4.1 The Chair shall open the sub-committee and remind Members of their obligation to declare any personal and prejudicial interests.
- 4.2 If appropriate, the sub-committee may make a resolution under Section 100A of the local Government Act 1972 to exclude the public from the hearing of a particular matter. Alternatively the sub-committee may make a resolution to exclude the public from the hearing of a particular matter where it considers this to be in the public interest.

- 4.3 The Chair shall identify the elected Members, the Legal Adviser, the Member Services Officer (and the Licensing Officer, if present) for the benefit of those attending the hearing. The Chair shall explain the officers' respective roles.
- 4.4 Each matter to be dealt with by the sub-committee shall be called in turn, usually in the order listed on the sub-committee agenda. However, the Chair may change the order at his/her discretion.
- 4.5 If the matter is being heard in private, the Member Services Officer will direct everyone except the Members, officers and parties to leave the room.
- 4.6 As each matter is called, the Chair will ask all the parties to identify themselves. Parties may be assisted or represented by any person whether or not that person is legally qualified, except that the sub-committee may require any person attending the hearing who in its opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit that person to return, or permit them to return only on such conditions as the sub-committee may specify; but such a person may, before the end of the hearing, submit to the sub-committee in writing any information which they would have been entitled to give orally had they not been required to leave.
- 4.7 The Chair (or Legal Adviser) will ask the parties if they understand the procedure to be followed and, if not, will explain the procedure to them, including any maximum time-limit to be imposed in respect of each party's representations.
- 4.8 If a party has informed the authority that he will not be attending or be represented at the hearing, it may proceed in his absence. If a party who has not informed the authority that he will not be attending or represented fails to attend or be represented, the sub-committee may hold the hearing in that party's absence or, if it considers it to be necessary in the public interest, adjourn the hearing to a specified date.
- 4.9 Where the authority holds a hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- 4.10 Where the authority adjourns a hearing to a specified date, it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.
- 4.11 The Chair (or Legal Adviser or Licensing Officer) will introduce the matter by outlining the relevant facts. If the Licensing Officer attends, the Members may consult him at any time during the hearing to clarify any point relating to the application.
- 4.12 The sub-committee shall consider any request(s) previously made by any party(s) (in its Response to Notice of Hearing) for permission for another person to appear, and such permission shall not be unreasonably withheld.

- 4.13 The Chair (or Legal Adviser) will invite the applicant(s) to present his case to the sub-committee, subject to any maximum time-limit imposed and to the requirements of paragraphs 4.19 and 4.20 below.
- 4.14 Members of the sub-committee may ask questions of the applicant(s) and of any other person appearing on behalf of the applicant. Any other party may ask questions with the permission of the sub-committee.
- 4.15 The Chair (or Legal Adviser) will then invite each interested party and/or responsible authority in turn to present its case to the sub-committee, subject to any maximum time-limit imposed and to the requirements of paragraphs 4.19 and 4.20 below.
- 4.16 Members of the sub-committee may ask questions of each party who has addressed them and of any other person appearing on that party's behalf. Any other party may ask questions with the permission of the sub-committee.
- 4.17 The Chair (or Legal Adviser) will then invite the applicant to respond to the representations made by the other parties.
- 4.18 Where the sub-committee sets a maximum time-limit for each party to present its case, that time-limit shall apply to all parties.
- 4.19 Applications, relevant representations and/or notices shall have been sent to the authority, and to the other parties entitled to receive them, prior to the hearing within the statutory time-limits. The sub-committee may, at its discretion take into account additional documentary or other information produced by a party in support of its application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing. Any party seeking to produce additional documentary information shall provide sufficient copies for the Members, officers and other parties attending the hearing.
- 4.20 The sub-committee shall disregard any information given or evidence produced by a party or a witness which is not relevant to:-
- (1) its application, representations or notice (as applicable), and
 - (2) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a Chief Officer of Police, the crime prevention objective.

5. Evidence

The strict legal rules of evidence shall not apply and evidence shall not be given on oath.

6. Legal Advice

- 6.1 The role of the sub-committee's Legal Adviser is to provide the Members with advice on:-
- questions of law;

- matters of practice and procedure;
- the options available to the sub-committee in making their decision;
- any relevant decisions of superior courts, or other guidelines (eg. - Government Guidance on the 2003 Act and the Council's Statement of Licensing Policy);
- other issues relevant to the matter before the sub-committee (eg. any consultation currently in progress through Council etc.)
- where appropriate to assist the sub-committee in recording the reasons for its determination.

6.2 The Legal Adviser may ask questions of parties and persons appearing on their behalf in order to clarify the evidence and any issues in the case.

6.3 The Legal Adviser has a duty to ensure that every case is conducted fairly.

7. Determination of applications

7.1 When all the evidence has been heard, the Members may withdraw to make their deliberations. The Member Services Officer and the Legal Adviser may remain with the sub-committee to give legal or procedural advice, but the Members will make the determination.

7.2 If the sub-committee needs to ask any further questions of any party, all parties will be asked to return before the sub-committee.

7.3 In the case of hearings held under the following sections of the Act, the sub-committee shall make its determination at the conclusion of the hearing:

- Hearing to consider police objection to temporary event notice [s.105(2)(a)]
- Hearing to consider review of premises licence following closure order [s.167(5)(a)]
- Hearing to determine application for conversion of existing licence to a new premises licence [Schedule 8, para 4(3)(a)]
- Hearing to determine application to vary a premises licence which is made at the same time as an application to convert an existing licence [s. 35 or s.39]
- Hearing to determine application for conversion of existing club certificate to a new club premises certificate [Schedule 8, para 16(3)(a)]
- Hearing to determine application to vary club premises certificate which is made at the same time as an application to convert an existing club registration certificate [s.85]
- Hearing to determine application for grant of personal licence to existing justices' licence holder [Schedule 8, para 26(3)(a)]

7.4 In any other case the authority shall make its determination within the period of 5 working days beginning with the day (or the last day) on which the hearing was held.

7.5 Where all the parties have agreed that no hearing is required, the authority shall make its determination within the period of 10 working days beginning with the day on which it gives notice to the parties.

8. Quorum

8.1 The quorum for any hearing of a licensing sub-committee shall be two (2) Members.

8.2 Determinations shall be made by a majority vote with the Chair having a casting vote in the event of an inconclusive result.

9. Record of proceedings

The authority shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for 6 years from the date of the determination or, where an appeal is brought against the determination of the authority, the disposal of that appeal. This shall be the responsibility of the Member Services Officer.

10. Irregularities

10.1 Any irregularity resulting from any failure to comply with any provision of the Regulations before the authority has made a determination shall not of itself render the proceedings void.

10.2 In the case of any such irregularity, where it considers that any person may have been prejudiced as a result, the authority shall take such steps as it thinks fit to remedy the irregularity before reaching its determination.

10.3 The authority may correct clerical mistakes in any document recording a decision of the authority or errors arising in such a document from an accidental slip or omission.

11. Form of notices

11.1 Any notices required to be given under this procedure (and/or under the Regulations) must be given in writing.

11.2 The requirement that any notice must be given in writing shall be satisfied where:-

- (a) the text of the notice
 - (i) is transmitted by electronic means;
 - (ii) is capable of being accessed by the recipient;
 - (iii) is legible in all material respects; and
 - (iv) is capable of being reproduced in written form and used for subsequent reference;

- (b) the person to whom the notice is to be given has agreed in advance that such a notice may be given to them by electronic means; and
- (c) forthwith on sending the text of the notice by electronic means, the notice is given to the recipient in writing.

11.3 Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the requirements of paragraph 15.2(a) are satisfied.

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**EXETER CITY COUNCIL
LICENSING ACT 2003**

NOTICE OF HEARING BEFORE A LICENSING SUB-COMMITTEE

Date: 26 November 2009
Name: John Gaunt Solicitors. For the attention of P. Robson
Address: Omega Court
372-374 Cemetery Road
Sheffield
S11 8FT

Case Number:

Application: By: John Gaunt Solicitors on behalf of the Hole in the Wall
Of: Little Castle Street Exeter EX4 3PX
Re: TEMPORARY EVENT NOTICE

PLEASE NOTE that the hearing of this application will be heard by the licensing sub-committee sitting

AT: The Civic Centre, Paris Street, Exeter

AT: 09.30

ON: Thursday 3 December 2009



Principal Licensing Officer

N.B. Because you have made written representations against this application, you are now a party to the proceedings and **you should respond to this notice if you wish to address the sub-committee.** Please turn to page 2 which explains how and by when you should respond.

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10.2 In the case of any such irregularity, where it considers that any person may have been prejudiced as a result, the authority shall take such steps as it thinks fit to remedy the irregularity before reaching its determination.

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- (b) the person to whom the notice is to be given has agreed in advance that such a notice may be given to them by electronic means; and
- (c) forthwith on sending the text of the notice by electronic means, the notice is given to the recipient in writing.

11.3 Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the requirements of paragraph 15.2(a) are satisfied.

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Exeter City Council

REPORT TO LICENSING SUB-COMMITTEE HEARING: LICENSING ACT 2003 3/12/2009

APPLICATION: Review of a Premises Licence REPORT BY Principal Licensing Officer

PART I

1. THE APPLICATION

- 1.1 **Applicant** Sgt Neil Harvey
Premises Flying Horse Public House Wonford Exeter
- 1.2 **Application**
- 1.3 To seek a REVIEW of the premises licence under S51 of the Licensing Act 2003, as the licensing objectives relating to the prevention of crime and disorder; prevention of public nuisance and the protection of children from harm are being undermined at the premises. **Pages 5-12**
- 1.3 The application relates to the issues arising at the premises in general and the management of it more specifically. A number of supporting documents have been submitted and are attached; statements from police officers and others have been previously circulated.

PART II

2. RELEVANT REPRESENTATIONS

- 2.1 Representations relating to the review have been received from:
- 2.2 Sgt. Neil Harvey of the Devon and Cornwall Constabulary.
- 2.3 A log of incidents has been received from the Devon and Cornwall Constabulary marked LC/1. These relate to 36 matters arising since September 2008. **pages 13-18**
- 2.4 A further 8 visits to the premises were logged as supervisory; routine or for checking purposes. NB This second list appears to have been included twice. **pages 19-22**

- 2.5 Of these 44 visits incident logs [L10 forms] were submitted in relation to 15 of those incidents. **pages 23-51**
- 2.6 A log of incidents and supporting comments has been received from a resident in the vicinity of the premises. Details of name and address have been removed and the complainant has asked that Cllr Marcel Choules speak to the matter **page 52-55**
- 2.7 A letter to the designated premises supervisor and marked LC/2 is attached. **Page 56**
- 2.8 Documents submitted as LC/3 have been included by the police in the papers submitted. **pages 57-59**
- 2.9 Statements from police officers are included at LC/4 LC/5 **pages 60-63**
- 2.10 The document submitted as LC/6 has been included although it was submitted by a person who does not reside in the vicinity. The submission by Cllr L. Robson complies with the official guidance issued under the Licensing Act 2003. This guidance was very recently reviewed and amended to allow Cllrs to make representations in their own right. **pages 64-65**
- 2.11 Statements from Constable M. Matthews and L. Carlo marked LC7 & LC/8 are attached at **pages 66-70**

All documents previously submitted to the premises Licence holders.

PART III

3. RELEVANT LICENSING POLICY CONSIDERATIONS Licensing Objectives

- 3.1 Because of the generic nature of the application, the statement of Licensing Policy does not provide any specific direction in regard to the matters raised. However in regard to the protection of children there is reference at paragraph 7.1
- 3.2 Paragraph 7.1 states "when deciding whether to limit access to children or not the licensing authority will judge each application on its own individual merits. Examples

which may give rise to concern in respect of children would include premises:

- with a known association with drug taking or dealing
 - where there have been convictions of members of the current staff for serving alcohol to those under 18
 - with a reputation for underage drinking.
- 3.3. Paragraph 14.1 of the policy states “The licensing authority recognises that drug use is not something that is relevant to all licensed premises. However, special conditions may need to be imposed for certain types of venues to try to reduce the sale and consumption of drugs and to create a safer environment for those who may have taken them. The conditions to be imposed in such cases are taken from the DCMS pool of conditions, which take into account the report “Safer Clubbing” issued by the Home Office. In all cases where these conditions are to be imposed, advice will be taken from the local Drugs Action Team and the Police.
- 3.4. In regard to Public nuisance the Policy states in part at paragraph 17.1 “To promote the licensing objectives applicants for licences for licensable activities will, if the Licensing Authority is engaged through relevant representations, be required to demonstrate the measures they have in place for the prevention of public nuisance. The impact of the licensable activities on people living in the vicinity should not be disproportionate or unreasonable. The prevention of public nuisance can include low-level nuisance affecting a few people living locally as well as a major disturbance affecting the whole community. It may also include the prevention of the reduction of the living and working amenity and environment of the interested parties”

PART IV

4. RELEVANT STATUTORY PROVISIONS AND OFFICIAL GUIDANCE CONSIDERATIONS

- 4.1 Newly issued Official Guidance issued under section 182 of the Licensing Act 2003 covers all the Licensing Objectives raised in the police representations and is attached at **pages 71-78**

PART V

5. OBSERVATIONS

- 5.1 The Committee are asked to determine the application for the Review of the licence issued to the Flying Horse as requested by Sgt Harvey. The Committee is obliged to determine this application with a view to upholding the Licensing Act 2003 objectives, which is in this case, crime and disorder; prevention of public nuisance and the protection of children from harm.
- 5.2 The Committee must have regard to all of the relevant representations made by the parties; the evidence provided in relation to the premises from all the parties involved and the evidence it hears in reaching its decision.
- 5.3 The Committee must take such of the following steps, if any, as it considers necessary for the promotion of the licensing objectives.
- 5.4 Modify conditions by altering, omitting or adding them;
- 5.5 Exclude a licensable activity from the licence;
- 5.6 Remove the Designated Premises Supervisor;
- 5.7 Suspend the premises Licence (subject to a maximum period of three months).
- 5.8 Revoke the licence
- 5.9 The Committee should be mindful that in making their decision, whether to modify conditions or to suspend or revoke the licence, it must be necessary to do so to promote the licensing objective relating to the Public safety, not just because it is considered desirable to do so.



Author:
Date:

20-11-09

Principal Licensing Officer
Reference:

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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