



**FOR THE CHAIR AND MEMBERS OF
THE LICENSING SUB-COMMITTEE
FOR 7 OCTOBER 2008**

APPLICATION FOR REVIEW OF PREMISES LICENCE

Applicant: Middlesbrough Council Environmental Health

Ref.No.MBRO/PR076

Premises: The Red Rose Public House, Cumberland Road, Middlesbrough, TS5 6JB

Premises Licence Holder: Mr Stephen Gavin

Application received: 14 August 2008

Summary of current Licensable Activities:

Sale of alcohol
Live Music
Recorded Music
Facilities for dancing
Facilities like music/dancing

Summary of current hours of Licensable Activities:

All licensable activities	11am - 11.00pm	Monday to Thursday
	11am – 12 midnight	Friday & Saturday
	12 noon – 10.30pm	Sunday
	11am – 12 midnight on:-	every Friday, Saturday, Sunday & Monday for each Easter Bank Holiday weekend, May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend Christmas Eve Boxing Day

Premises to close 30 minutes after the end of licensable activities.

A copy of the current Premises Licence is attached at Appendix 1.

1. Background Information

The premises consist of a public house situated in close proximity to residential premises, the nearest being less than 10 metres away. A map showing the location of the premises is attached at Appendix 2. Prior to the introduction of the Licensing Act 2003 the premises had the benefit of a Justices On Licence and Public Entertainment Licence covering the following hours:-

11am – 11pm	Monday to Friday
12 noon – 10.30pm	Sundays

The previous Public Entertainment Licence contained a number of conditions which were imposed by the Licensing Committee with the aim of reducing noise disturbance to nearby residents. Those conditions are:-

- Prior to the commencement of public entertainment at the premises, the applicant shall install and operate a suitable noise-limiting device incorporating a noise cut-off device, which shall be set at a level to be agreed with Middlesbrough Council. The noise-limiting device shall be used to control noise from all public entertainment events held thereafter at the premises.
- All external doors (including fire exit) of the areas within the premises used for entertainment shall be kept closed during times of entertainment, except for emergency egress.
- All windows in the areas within the premises used for public entertainment shall be kept closed at all times during such events to prevent noise nuisance to neighbours.
- A noise cut-off device shall be installed by the applicant, which will become active if the fire exit doors in the lounge are opened during public entertainment.

On 26 June 2005 the previous licence holder applied to convert the Justices On Licence and Public Entertainment Licence into a Premises Licence under the Licensing Act 2003. At the same time an application was made to vary the licence to increase the hours for all licensable activities from 11am to 12 midnight daily with a 1am terminal hour on Bank Holiday weekends. On the 22 August 2005 the matter was heard by Members of the Licensing Committee, who after considering representations from local residents, the Community Council and the Environmental Health (Noise) Officer granted the variation in part to allow an extension to the hours for licensable activities until 12 midnight on Fridays and Saturdays only with a 12 midnight terminal hour on Bank Holiday weekends. All of the previous noise conditions attached to the previous Public Entertainment licence were transferred to the new Premises Licence with the addition of the following conditions to minimise noise disturbance to local residents:-

- That signage be fixed inside the premises requesting patrons leave quietly
- That announcement be made by DJ's at the end of an event requesting patrons leave quietly

On 22 May 2007 the Premises Licence was transferred to Stephen Gavin, the current licence holder. Since the transfer of the licence there have been 3 variations to the licence to change the Designated Premises Supervisor at the premises. The current Designated Premises Supervisor is Stephen Gavin, the Premises Licence holder.

2. Details of Application for Review of Premises Licence

On 14 August 2008 an application was received from Linda Cummins, the Principal Environmental Health Officer, for a Review of the Premises Licence for the Red Rose Public House on the grounds of the prevention of public nuisance. The Officer states that there have

been numerous complaints since June 2007 from both local residents and local Councillors in relation to noise nuisance associated with the premises. Some of the complaints relate to loud music escaping from the premises whilst others relate to noise and anti social behaviour from customers using the outside drinking/smoking areas.

The Officer also states that between June 2007 and November 2007, as a result of these complaints, Officers working on the Council's Out of Hours Noise Patrol have monitored the premises and witnessed breaches of licence conditions on 9 occasions due to the doors being kept open whilst entertainment was taking place. In addition, they also witnessed 9 occasions when loud voices could be heard from customers using the outside drinking/smoking areas.

Following continuing complaints, noise recording equipment was placed in the home of a local resident to monitor outdoor entertainment from an event taking place at the premises on 27 July 2008. The levels recorded from the front bedroom of the resident's home at 11.30pm were 8 times louder than that recommended by the World Health Organisation. As a result of this a Noise Abatement Notice was served on Stephen Gavin, the Premises Licence holder on 8 August 2008 preventing any further amplified sound being played in the outside area of the premises.

The Officer states that despite several meetings with the Premises Licence Holder and several advice letters being sent there have been no improvements sustained. She states that during a recent visit to the premises Mr Gavin proposed a number of steps to control the noise emanating from the premises which would help to reduce nuisance to residents but that it remains to be seen whether there is sufficient control of the premises to put such steps into practice.

Full details of the application and supporting statement are attached at Appendix 3.

3. Other Relevant Information

On 4 June 2007 a complaint was made to the Licensing Section by the Ward Councillor, on behalf of local residents in relation to noise nuisance at the premises. The complaint related to noise from a Karaoke taking place at the premises every Sunday. It was alleged that the doors and windows of the premises were left open during these events leading to noise disturbance to local residents. On 5 June 2007 a letter was sent to Stephen Gavin advising him of the complaints and advising him that it was a condition of the premises licence that all windows and doors should remain closed whilst entertainment was taking place. In addition, the letter advised that the premises would be monitored to ensure compliance with the conditions. A copy of that letter is attached at Appendix 4.

On 24 July 2007 a complaint was made to the Licensing Section from a local resident alleging that on 20 June 2007, 15 to 20 customers were observed leaving the premises at approximately 3am, that there was regular noise disturbance caused by the windows and doors of the premises being left open and of excessive noise from rowdy customers using the outside drinking/smoking areas. A copy of this complaint was forwarded to the Environmental Health (Noise) Team for investigation. In addition, on 26 July 2007 Police and Licensing Officers visited the premises to advise the management of the complaints. Upon arrival at 11.15pm Officers observed 2 males standing in a newly erected smoking shelter near to the main entrance to the premises. Raised voices could clearly be heard between the males and as Officers approached 1 of the males began to urinate in the smoking shelter. The Licensing Police Officer warned the male in relation to his conduct before entering the premises to advise the Designated Premises Supervisor of the incident and the noise complaints. Upon leaving the premises Officers observed another group of customers leaving the premises, one of whom was urinating in the car park. Again the Licensing Police Officer warned the male as to his conduct.

On 7 August 2007 a complaint was made to the Licensing Section from another resident in relation to noise disturbances from the premises. The complainants stated that they had tried to approach the licence holder to resolve the issue but that the situation had not improved and that they now wished to make a formal noise complaint. The matter was referred to the Environmental Health (Noise) Team.

On 8 August 2007 Police and Licensing Officers visited the premises to carry out a routine licensing inspection. At the time of the inspection the premises were not complying with premises licence conditions in relation to CCTV and the provision of an accident book. A letter was sent to the premises on 16 August 2007 advising of the findings and asking that the matters be rectified. A copy of the letter is attached at Appendix 5.

On 18 September 2007 Police and Licensing Officers again visited the premises to check compliance with licence conditions. Again there was non-compliance with premises licence conditions in relation to CCTV and the provision of an accident book. A further letter was sent to Stephen Gavin and Kelly Berry, the then Designated Premises Supervisor warning that if the matters were not rectified consideration would be given to legal action in respect of the breaches. A copy of the letter is attached at Appendix 6.

On 27 September 2007 a letter was received from Stephen Gavin confirming that the problems had been rectified. He also enclosed a letter from Cleveland Security which explained the reason for the failure of the CCTV system. Copies of those letters are attached at Appendix 7. On 18 October 2007 Licensing Officers revisited the premises and found that the problems had been rectified.

On 10 November 2007 the Principal Licensing Officer and Principal Environmental Health (Noise) Officer met with Mr Gavin to discuss the ongoing noise complaints. Officers suggested that in relation to the noise being caused by customers using the newly erected smoking shelters it may be appropriate to relocate the shelters away from the nearby residential properties. However Mr Gavin did not feel that this was appropriate and stated that he would instead address the problem by placing signs around the premises asking his customers to have thought for local residents. He also suggested that he would instruct his door supervisors to intervene when customers were behaving in a rowdy manner and that he eventually intended to change the layout of the premises and that he believed that this would go some way to reducing the noise nuisance. Following the meeting a letter was sent to Mr Gavin on 14 November 2007, summarising the meeting and pointing out that the Licensing Act 2003 required that local residents be protected from public nuisance. A copy of the letter is attached at Appendix 8.

On 13 March 2008 a complaint was made to the Licensing Section by the local Ward Councillor in relation to the expansion of the beer garden at the premises. A local resident had complained to the Councillor of an increasing number of tables and chairs being placed in the grounds of the premises. The matter was referred to the Planning Department for investigation.

On 7 May 2008 a complaint was made to the Licensing Section by a local resident who alleged that music was being played at the premises until 11.30pm on Thursday evenings despite the licence only allowing entertainment until 11pm. In addition, the complainant stated that the fire exit at the side of the premises, leading to the beer garden, was still being left open during entertainment.

On 8 May 2008 Licensing Officers visited the premises in relation to the complaint. Upon arrival Officers discovered entertainment being provided and that the fire exit door to the side of the premises leading to the beer garden was propped open allowing music to escape. Officers spoke to a member of staff, Ashley Gavin who advised that he believed entertainment was allowed until 12 midnight every day. Officers advised Ashley Gavin that the licence only permitted entertainment until 12 midnight on weekends and reminded him of the premises licence condition

in relation to the windows and doors to the premises being closed whilst entertainment was taking place. On 14 May 2008 a letter was sent to Stephen Gavin advising him of the incident and reminding him of the premises licence conditions. A copy of the letter is attached at Appendix 9.

On 2 June 2008 Stephen Gavin gave a Temporary Event Notice (TEN) to the Council for a 'Family Fun Day' event which was to take place on Sunday 29 June 2008 from 1pm to 12 Midnight. As Members will be aware the Licensing Act 2003 does not allow objections to be made by Responsible Authorities or Interested Parties to TENs on the grounds of the prevention of public nuisance. The only Responsible Authority permitted to object to a TEN are the Police who can only object if they believe the holding of the event would undermine the crime prevention objective. As a result of no representations from the Police the TEN was issued allowing the event to proceed on 29 June 2008.

On 7 June 2008 Officers from the Council's Out of Hours Noise Patrol were called to the premises by a local resident who complained of loud music escaping from the premises through doors which were being left open. Upon arrival Officers discovered doors open and spoke to the manager who advised that he was unaware that the doors were open. As a result of the visit the doors were subsequently closed. This information was then passed to the Licensing Section by the Environmental Health (Noise) Team.

On 13 June 2008, following receipt of this information, the Principal Licensing Officer visited the premises and spoke with Stephen Gavin. He advised Mr Gavin of the continuing complaints and that breaches of licence conditions had been identified. He further advised Mr Gavin that residents were aware of the Licensing Act Review procedure and that he was speaking with him on behalf of the residents in an attempt to resolve the problems without the need for the licence to be reviewed. Mr Gavin stated that the breaches had been allowed to occur by staff in his absence and that he had since reiterated to staff the importance of complying with the conditions.

The Principal Licensing Officer then discussed with Mr Gavin the forthcoming 'Family Fun Day' on 29 June 2008. Mr Gavin stated that the event was to be held for the benefit of the local community and that he intended to have outside musical entertainment, a BBQ, children's rides and a firework display throughout the day. The Principal Licensing Officer asked Mr Gavin to have consideration for local residents bearing in mind the history of noise complaints and suggested a number of measures to minimise noise disturbance including:-

- Monitoring the noise levels and keeping the volume to a minimum
- Giving advance warning to residents, via a leaflet drop the nearest residential properties, informing them of the event and proposed activities
- Giving residents a contact telephone number to call during the event should they be disturbed by noise from the event.

Mr Gavin stated that even though the TEN allowed entertainment until 12 midnight it was his intention to cease the outside musical entertainment by 10pm.

On 16 June 2008 a letter was sent to Mr Gavin by the Principal Licensing Officer detailing a summary of the discussions with him on 13 June 2008 in relation to the breaches of premises licence conditions and the possible implications, including the Review procedure, should the problems persist. A copy of the letter is attached at Appendix 10.

On 3 July 2008 Stephen Gavin gave a further Temporary Event Notice (TEN) to the Council for a 'Family Fun Day' event which was to take place on Sunday 27 July 2008 from 1pm to 12 Midnight. As a result of no representations from the Police on the grounds of the prevention of crime and disorder the TEN was issued allowing the event to proceed on 27 July 2008.

On 9 July 2008 a complaint was made to the Licensing Section by a local resident in relation to the 'Family Fun Day' held at the premises on 29 June 2008. The complaint related to loud music from the event and to concerns relating to health and safety following a firework display held at the event. The complainant was advised of the Licensing Act Review procedure and also referred to the Environmental Health (Noise) Team to make a formal noise complaint.

On 10 July 2008 a complaint was made to the Licensing Section by the Ward Councillor on behalf of a number of residents. The complaint again related to noise nuisance as a result of the 'Family Fun Day' on 29 June 2008 and concerns were raised regarding further similar events. As a result of the complaint a meeting was arranged with the Ward Councillor, 6 local residents, the Principal Licensing Officer and the Principal Environmental Health (Noise) Officer to discuss the problems. At the meeting the residents submitted an 84 signature petition protesting against the recent events and objecting to future planned events. A copy of the petition is attached at Appendix 11. At this meeting Officers explained to residents the limited grounds for objection against a TEN but agreed to raise their concerns with the premises licence holder and to monitor future events.

On 10 July 2008 Licensing Officers again visited the premises to check compliance with licence conditions. Upon arrival Officers again discovered the fire exit open whilst entertainment, in the form of a Karaoke, was taking place. Officers spoke to a member of staff, Ashley Gavin who blamed the non-compliance on customers who were leaving the door open as they were going outside for a cigarette. Officers advised Ashley Gavin to consider having self-closing devices fitted to the doors and asked him to make Stephen Gavin aware of the visit and findings.

On 22 July 2008 the Principal Licensing Officer and Environmental Health (Health and Safety) Officers visited the premises to speak to Stephen Gavin in relation to the forthcoming TEN on Sunday 27 July 2008. The Health and Safety Officers discussed with Mr Gavin Health and Safety issues surrounding the event, including the storage and setting off of fire works. The Principal Licensing Officer also discussed residents' concerns in relation to noise nuisance from the event. Mr Gavin stated that he was aware of the residents objecting to the event but stated that an equal number of local residents were in support of the event. He stated that in order to minimise noise disturbance the band was scheduled to perform between 9pm and 10pm and that the fireworks display was due to finish at approximately 10.15pm.

On the afternoon of 27 July 2008 Officers visited the event to check Health and Safety issues surrounding the firework display. Whilst attending the event Officers witnessed loud music being played to a large crowd who were seated in the car park near to a temporary stage which had been erected for an Abba tribute band which was to play later that evening. The music could clearly be heard in the surrounding streets.

On 31 July 2008 a Licensing Officer again visited the premises and witnessed the windows and fire exit open whilst entertainment was taking place.

On 6 August 2008 a letter was sent to Stephen Gavin advising him that Licensing Officers wished to interview him in relation to breaches of licence conditions on the following dates:-

- 8 May 2008
- 7 June 2008
- 10 July 2008
- 31 July 2008

On 7 August 2008 Stephen Gavin gave a further Temporary Event Notice (TEN) to the Council for a 'Family Fun Day' event which was to take place on Sunday 31 August 2008 from 1pm to

2am. As a result of no representations from the Police on the grounds of the prevention of crime and disorder the TEN was issued.

On 8 August 2008 the Principal Licensing Officer, Principal Environmental Health (Noise) Officer and Sgt P Higgins of Cleveland Police Licensing Unit met with Stephen Gavin to express concerns in relation to the disturbance caused to local residents by the TENs. At this meeting Mr Gavin was served with a Noise Abatement Notice by the Principal Environmental Health (Noise) Officer to prevent any further amplified sound being played to the outside area of the premises. As a result of this meeting Mr Gavin cancelled the 'Family Fun Day' planned for 31 August 2008.

On 1 September 2008 Stephen Gavin was interviewed under caution by Police and Licensing Officers in relation to continual breaches of the premises licence conditions relating to the prevention of public nuisance. At the interview Mr Gavin produced a Noise Limitation Action Plan which he was proposing to implement to minimise noise nuisance. A copy of the plan is attached at Appendix 12. At the end of the interview Mr Gavin was reported for the offences and evidence is currently being considered with a view to instigating legal proceedings against him.

On 11 September 2008 Officers visited the premises at the request of Mr Gavin to check on the progress of measures proposed in his Noise Limitation Action Plan. A number of measures had been implemented with further works scheduled in the near future. His proposal to relocate the fire exit further away from residential premises is on hold as the works would be subject to an application for Building Regulation Approval. Mr Gavin has informed Officers of his intention to submit the application for Building Regulation Approval.

4. Notification to Responsible Authorities/Advertisement:

The Principal Environmental Health (Noise) Officer has confirmed that copies of the application were served on all responsible authorities on 14 August 2008.

In addition, to fulfil the requirements of the Licensing Act 2003, Licensing Officers have posted notices in the vicinity of the premises and in the Council Offices advertising the review application. At the end of the 28 day consultation period a further 9 representations were received.

5. Further Representations

On 3 September 2008 a representation was received from Cleveland Police on the grounds of prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm (see Appendix 13). The Police highlight a number of incidents of disorder at the premises between June 2007 to date which have required Police attendance. In addition, they state that on 27 July 2008 the Police received no fewer than 8 complaints from local residents in relation to noise emanating from the premises. They also refer to an incident of an underage sale of alcohol to 15 and 16 year old girls as part of a Police lead test purchase which resulted in the seller being issued with a fixed penalty ticket. Further statements have been provided by Sgt P Higgins and PC L Thompson and are attached at Appendix 14 and 15.

On 3 September 2008 a representation was received from Councillor F McIntyre, the Ward Councillor on the grounds of the prevention of crime and disorder and the prevention of public nuisance. Councillor McIntyre raises concerns regarding loud music emanating from the premises and the anti-social behaviour of customers using the premises (see Appendix 16)

On 8 September 2008 a representation was received from Mrs Wendy Aspland, a local resident, on the grounds of the prevention of crime and disorder and the prevention of public nuisance.

She raises concerns in relation to noise nuisance and anti-social behaviour caused by customers using the premises. In particular, she complains of the disturbance caused to local residents as a result of the 'Family Fun Day' events which have been held in the car park of the premises (see Appendix 17).

On 9 September 2008 a representation was received from Barbara Smith of the Park Ward Community Council on the grounds of the prevention of public nuisance. She states that following a recent Community Council Meeting she has been asked to raise the concerns of a large group of residents in relation to noise nuisance being generated from a number of sources associated with the premises including music escape via the open fire exit and the noise from customers using the outside drinking/smoking area. In addition, she complains of the disturbance caused to local residents as a result of the 'Family Fun Day' events (see Appendix 18).

On 9 September 2008 a representation was received from Mrs Susan Riley, a local resident, on the grounds of the prevention of crime and disorder, the prevention of public nuisance and public safety. She states that for the past 2 years her family have experienced disturbances caused by excessive loud music noise through the open fire exit, customers fighting and using foul language, customers urinating in her garden, customers leaving well after closing time and barrels being rolled out on weekends between 11.45pm and 12.15am. In addition, she points to the recent expansion of the seating in the beer garden, from 3 tables seating 12 people to seating for in excess of 100 people at the present time. She also complains of the disturbance caused to her family by the 'Family Fun Days', in particular by the live bands and firework displays (see Appendix 19).

On 9 September 2008 a representation was received from T Annandale, a local resident, on the grounds of the prevention of crime and disorder and the prevention of public nuisance. She complains of disturbances caused by loud music, use of foul language and occasional fighting by customers, taxis arriving and sounding horns, customers using her garden as a toilet and noise from customers using the outside drinking/smoking area. She states that the current restrictions placed on the premises do not seem to be put into practice and also complains about the disturbance caused by the 'Family Fun Days' (see Appendix 20).

On 9 September 2008 a representation was received from Mrs L Rathbone, a local resident, on the grounds of the prevention of public nuisance. She complains of disturbance from music and anti-social behaviour and of the disturbance caused by the 'Family Fun Days' (see Appendix 21).

On 9 September 2008 a representation was received from Mrs L Corner, a local resident, on the grounds of the prevention of public nuisance and the protection of children from harm. She states that she has lived in Cumberland Road for 47 years and has never experienced any real problems until recently. She complains of a dramatic increase in noise and anti-social behaviour at the premises including beer bottles and glasses littering the area next to her home. She also points to an expansion of the drinking/smoking area and to problems caused by the 'Family Fun Day' (see Appendix 22).

On 11 September 2008 a representation was received from Mr & Mrs Brothwood, local residents, on the grounds of the prevention of crime and disorder and the prevention of public nuisance. They complain of disturbance caused by noise and anti-social behaviour from customers, in particular fighting and broken glass (see Appendix 23).

6. Legislation

The Licensing Act 2003 requires the Licensing Authority to carry out its functions with a view to promoting the four licensing objectives:

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from Harm

The Licensing Authority must also have regard to its Licensing Policy and any guidance issued by the Secretary of State.

The Licensing Act 2003 provides a procedure for review of a premises licence by any responsible authority or interested party who consider that there are problems at a premises which would impact on any of the licensing objectives.

7. Guidance to the Licensing Act 2003

Members are referred to the following relevant sections of the Guidance.

Reviews Starting at para 11.1 (page 82)

And any other sections of the Guidance which Members consider to be relevant.

8. Middlesbrough Council Licensing Policy

Members are referred to the following relevant sections of the Policy.

Prevention of Nuisance	pages 10 to 16
Crime and Disorder	pages 17 to 20

9. Members' Options

Members may consider the following options:

1. To modify the conditions of the licence.
2. To exclude a licensable activity from the scope of the licence.
3. To remove the designated premises supervisor.
4. To suspend the licence for a period not exceeding 3 months.
5. To revoke the licence.
6. Alternatively Members may consider that it is not necessary to take any of the above steps and may issue an informal warning/and or recommend improvement within a certain time period.

Members are reminded that any aggrieved party (i.e. Applicant for the review, Holder of the Premises Licence any other person who made a relevant representation) may appeal any decision of the Licensing Committee to the Magistrates Courts.

Contact Officer: Tim Hodgkinson
Principal Licensing Officer
Tel. 728720

Ed Chicken
Head of Community Protection
Date 7 October 2008

For admin use only:

Decision:

Reasons: