

WYRE FOREST DISTRICT COUNCIL

LICENSING SUB-COMMITTEE

14TH OCTOBER 2009

**Application for the Review of Premises Licence in respect of
O'Dowds, 27 Blackwell Street, Kidderminster**

OPEN	
RESPONSIBLE OFFICER:	Director of Planning and Regulatory Services
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APPENDICES	Appendix 1 - Photograph of O'Dowds Appendix 2 - Map to show location in Blackwell Street Appendix 3 - Premises Licence Appendix 4 - Personal Licence Appendix 5 - Police warning Appendix 6 - 2 nd Police Warning Appendix 7 - Letter 3 rd Warning Appendix 8 - Application for Review Appendix 9 - Public Notice Appendix 10 - Recommended new Conditions

1. PURPOSE OF REPORT

- 1.1 To consider an application made by West Mercia Constabulary under the provisions of Section 51 of the Licensing Act 2003, to review the Premises Licence granted to O'Dowds, situated at 27 Blackwell Street, Kidderminster, DY10 2DU.

2. RECOMMENDATION

The Committee is asked to DECIDE:

- 2.1 After hearing all relevant representations, whether any changes are deemed necessary to the terms of the Premises Licence and the Conditions attached to it, for the promotion of the Licensing Objectives.

3. BACKGROUND

- 3.1 O'Dowds is a Licensed Premises trading as a Public House at 27 Blackwell Street, Kidderminster DY10 2DU (Photograph at Appendix 1).
- 3.2 A plan is attached showing the location within a terrace of other business and residential premises (Map at Appendix 2).
- 3.3 Sconsa Limited, Redclyffe House, Mere Road, Newton Le Willows, Warrington, WA12 0BH has been registered with the Council as Premises Licence holder under the Licensing Act 2003 since 14th January 2008. The Licence permits the retail sale of alcohol (Copy at Appendix 3).
- 3.4 Mr Daniel Joel Pio O'Dowd has been registered with the Council as the Designated Premises Supervisor in accordance with the Premises Licence under the Licensing Act 2003 since 14th January 2008 (Copy at Appendix 3).
- 3.5 Mr Daniel Joel Pio O'Dowd, Designated Premises Supervisor, is the holder of a Personal Licence issued by Wyre Forest District Council on 7th December 2007 (Copy at Appendix 4).
- 3.6 A Designated Premises Supervisor, (Personal Licence Holder) authorises the sale of alcohol. Any sale or authorisation of the sale of alcohol, made by a Personal Licence holder must be made in accordance with the terms of the Premises Licence relating to the premises at which the sale is taking place.

4. KEY ISSUES

- 4.1 A review of Premises Licence is subject to Government Guidance under Section 182 of the Licensing Act 2003. Notably that:-

Paragraph 5, 103

"The promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is equally important that reviews are not used as a wedge between these groups in a way that would undermine the benefits of co operation. It would therefore be good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision for Review."

POLICE

Verbal Warning - Drunkenness

4.2 Police attention was drawn to O'Dowd's Bar early in 2009.

4.3 Police Officers patrolling Blackwell Street gave advice to Mr O'Dowd warning him that the conduct at the premises was unsatisfactory in that there were grounds to have concerns over:

- Drunkenness by customers at the premises (Appendix 5)

Second Warning – Breach of Licence Conditions

4.4 On the 21st May 2009 Police warned Mr O'Dowd that he was in breach of his Premises Licence Conditions because the CCTV was not working (Appendix 6).

Third Warning – Crime and Disorder

4.5 On the 17th June 2009 Mr Daniel O'Dowd invited to attend a meeting at the Wyre Forest District Council Offices with the Police and the Council's Principal Licensing Officer.

4.6 The grounds for further warning were that:

- A serious assault had occurred at O'Dowds when a customer was stabbed with a glass. The offender had been banned from all licensed premises within Kidderminster by an arrangement with local Publicans, but Mr O'Dowd allowed him to purchase alcohol and remain on his premises. That person became intoxicated and out of control. He was involved in fighting other customers and the Police attended.
- Mr O'Dowd was told that conduct at the premises over recent weeks was unacceptable.
- He was advised about his responsibilities as a Designated Premises Supervisor and how he should properly promote the objectives of the Council's Licensing Policy.

4.7 Mr O'Dowd agreed:

- that his staff should receive training to address the problems of drunkenness
- that he should keep a refusals Book to record the number of occasions when young persons have been refused alcohol.

4.8 Mr O'Dowd agreed to work with the Police and the Local Authority to achieve a standard of good management.

4.9 The recommendations were recorded in a letter sent to Mr O'Dowd on The 17th June 2009 (Appendix 7).

Sale of Alcohol to Children

- 4.10 Licensing authorities are expected to maintain close contact with the Police, Young Offender's Teams and Trading Standards Officers about the extent of unlawful sales and consumption by minors and be involved in the development of strategies to control or prevent these unlawful activities and to pursue prosecutions.

Breach of Licence Condition

- 4.11 Section 145 of the Licensing Act makes it an offence to permit children under the age of 16 years unaccompanied by an adult (that is a person aged 18 years or over to be present on premises open for the supply of alcohol for consumption there and being used exclusively or primarily for the supply of alcohol on those premises.
- 4.12 The Premises Licence at O'Dowd's has a Condition of Licence which they asked specifically to be endorsed:

"Access by children to the premises is prohibited"

which implies that children are not permitted at any time even if accompanied by an adult (Appendix 3).

OFFENCE

- 4.13 On the 21st August 2009 Trading Standards Officers engaged in a test purchase operation in the District of Wyre Forest. They visited O'Dowd's assisted by two 15 year old girls.
- 4.14 Mr O'Dowd served both girls with alcoholic drinks in breach of the Licensing Act 2003.
- 4.15 Mr O'Dowd has been reported for the consideration of prosecution for that offence.
- 4.16 Police Officers challenged other young customers on the premises as to their ages, and some were required to leave.

APPLICATION FOR REVIEW

- 4.17 On the 1st September 2009 an application to Review the premises Licence was received from the West Mercia Constabulary, Kidderminster Division, under the provisions of section 51 of the Licensing Act 2003 (Copy at Appendix 8).
- 4.18 The grounds cited are:
- The prevention of crime and disorder
 - The protection of children from harm.

- 4.19 The premises were visited that day to enable notice of the review to be displayed in and upon the premises in a prominent position visible to the public.
- 4.20 A copy of the Review Application was posted by Police to Mr O'Dowd at his home address in Stourport on Severn, O'Dowds, 27, Blackwell Street, Kidderminster, DY10 2DU, and Sconsa Limited, Redclyffe House, Mere Road, Newton Le Willows, Warrington, WA12 0BH
- 4.21 Copy of the Review Application was posted to all Responsible Authorities.
- 4.22 A Public Notice was posted by Licensing Officers on and near the premises (Copy at Appendix 9).

5. FINANCIAL IMPLICATIONS

- 5.1 There are no financial implications.

6. LEGAL AND POLICY IMPLICATIONS

- 6.1 Section 52(3) and (4) of the Licensing Act 2003 provides:

The Authority must, have regard to the application and any relevant representations, take such steps as it considers necessary for the promotion of the licensing objectives.

- 6.2 These steps are:

- To modify the Conditions of the Premise Licence
- To exclude a licensable activity from the scope of the Premises Licence
- To remove the designated Premises Supervisor
- To suspend the Premises Licence for a period not exceeding three months
- To revoke the Premises Licence

Guidance issued under Section 182 of the Licensing Act 2003

- 6.3 If the authority decides to modify the Conditions of the Licence (for example by reducing the hours of opening) or to exclude a licensable activity from the scope of the licence (for example by excluding the playing of loud music) it can do so permanently or for a period of up to three months
- 6.4 Suspension similarly can be for a period of up to three months, although not for any longer period. If the 3 months period is deemed to be inadequate to promote the licensing objectives, the appropriate course would be to revoke the licence.

- 6.5 Revocation of the Premises Licence, even in the first instance should be seriously considered where the authority determines that the crime prevention objective is being undermined through the premises being used to further crimes.
- 6.6 The types of criminal activity that should be treated particularly seriously where the use of licensed premises for the purchase and consumption of alcohol by minors, which impacts on the health, educational attainment, employment prospects and propensity for crime of young people.
- 6.7 The remedial action taken should be directed at the causes and should always be no more than a necessary and proportionate response. For example, the removal and replacement of the designated Premises Supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to the poor management decisions made by that individual.
- 6.8 That such activity may take place notwithstanding the best efforts of the Premises Licence Holder and those working at the premises do not preclude the authority from taking any necessary steps in the wider interests of the community.

7. RISK MANAGEMENT

- 7.1 There are no Risk Management issues arising from this report.

8. CONCLUSION

- 8.1 Responsible Authorities have engaged with Mr O'Dowd to assist him with problems at the premises but to no avail. A package of tough new conditions have been drafted which are designed to combat the identified problem (Appendix 10)

RECOMMENDED CONDITIONS

- 8.2 The following new conditions are recommended:
 - 1 Removal of the Designated Premises Supervisor
 - 2 Suspension of the Premises Licence for a period of 28 days so that a new Designated Premises Supervisor can be appointed, and to allow time for staff training to take place.
 - 3 Restriction on trading hours i.e. No alcohol sales to take place between 4.30pm and 8-30pm on any day.
 - 4 No sales of Alco pop to take place.
 - 5 Any further breaches of the Licensing Act will result in a further appearance to ask for a Revocation of the Premises Licence.

9. **CONSULTEES**

9.1 Director of Legal and Corporate Services.

10. **BACKGROUND PAPERS**

10.1 Guidance under Section 182 of the Licensing Act 2003.

10.2 Wyre Forest District Licensing Policy Statement.