

**APPLICATION FOR A VARIATION OF PREMISES LICENCE AT: THE KINGSWAY,  
BRACKENSDALE AVENUE, MACKWORTH, DERBY.**

**RECOMMENDATION**

To consider the application and relevant representations.

To decide whether to:

- modify conditions consistent with the application for variation;
- exclude licensable activities from the licence;
- reject whole of the application;
- reject part of the application; or
- grant the application.

**SUPPORTING INFORMATION**

**MATTERS FOR CONSIDERATION**

- 2.1 An application for a variation of premises licence was received on 4 November 2005 from Robert & Anthony Fox. A copy of the application is attached at **Appendix 2**.
- 2.2 **The variation applied for is:** additional provisions for entertainment and longer hours for retail sales of alcohol.
- 2.3 The relevant licensable activity currently is live & recorded music and the supply of alcohol.
- 2.4 **The proposed licensed activities are:** indoor sporting events, live & recorded music and the supply of alcohol.
- 2.5 The hours of licensable activities currently are:  
10.00 - 23.00 Monday - Saturday, 12.00 – 22.30 Sunday & Good Friday, 12.00 -15.00 & 19.00 - 22.30 Xmas Day.
- 2.6 **The proposed hours of licensable activities are:**  
  
11:00 – 00:00 Sunday – Thursday & 11:00 – 01:00 Friday & Saturday for indoor sporting events.

21:00 – 01:15 every day for live music.

11:00 – 01:20 Monday – Saturday & 11:00 – 00:20 Sunday for recorded music.

11:00 – 01:00 Monday – Saturday & 11:00 – 00:00 Sunday for the sale of alcohol.

- 2.7 Other times the premises is to be open to the public:  
11:00 – 00:20 Sunday – Wednesday & 11:00 – 01:20 Thursday – Saturday.
- 2.8 The designated premises supervisor is Robert Fox.
- 2.9 The supply of alcohol is for consumption on and off the premises.
- 2.10 The steps the applicant intends to take to promote licensing objectives are outlined in the operating schedule attached at **Appendix 2**.
- 2.11 A plan of the premises will be presented at the committee hearing.
- 2.12 A consent form signed by the Designated Premises Supervisor is attached at **Appendix 3**.
- 2.13 Representations have been received from members of the public. A copy of these are attached at **Appendix 4**.
- 2.14 A relevant representation has been received from Pollution Control, a responsible authority. A copy of which is attached at **Appendix 5**.
- 2.15 A location map is attached at **Appendix 6**.
- 2.16 The Committee is obliged to determine this application with a view to promoting the licensing objectives, which are:
- the prevention of crime and disorder;
  - public safety;
  - the prevention of public nuisance;
  - the protection of children from harm.

In all applications relating to premises licences the City Council expects applicants to specify methods by which they will promote the four licensing objectives in their operating schedules.

- 2.17 In making its decision, the Committee is also obliged to have regard to national Guidance issued under Section 182 of the Licensing Act 2003 and the Council's own Licensing Policy.
- 2.18 In considering an application the Council must consider the application itself and any relevant representations.
- 2.19 The Council has a duty to act in a manner, which is compatible with the Human Rights Act 1998.

2.20 A Licence is regarded as property for the purposes of the Human Rights Act 1998. Article 1 of the First Protocol states that:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

2.21 The Committee must also take into account the effect on local residents. Article 8 states:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

2.22 Three stage test to be applied:

2.22.1 Is the interference in accordance with the law?

2.22.2 Is the interference necessary in a democratic society in pursuit of one of the legitimate aims set out above?

2.22.3 Is the decision proportionate ie. Striking a fair balance between the demands of the general interests of the community and the requirement to protect the individual’s fundamental rights?

## **Premises History**

3.1 The Kingsway is a public house.

### **For more information**

**contact:**

Michael Kay on 01332 716340 or e-mail: michael.kay@derby.gov.uk

**Background papers:**

None

**List of appendices:**

Appendix 1 – Implications

Appendix 2 – Application

Appendix 3 – Consent Form

Appendix 4 – Relevant Representation from the Public

Appendix 5 – Relevant Representation from Pollution Control

Appendix 6 – Location Map

### IMPLICATIONS

#### FINANCIAL

- 1.1 If the application is refused, the applicant will forfeit the fee. Should they wish to re-apply for a Licence at a later date a fresh fee will have to be paid.

#### LEGAL

- 2.1 Any party to the decision or anyone who has made a relevant representation [including a responsible authority or interested party] in relation to the application may appeal to the Magistrates Court within 21 days of notification of the decision. On appeal, the Magistrates Court may:
- 2.1.1 dismiss the appeal; or
  - 2.1.2 substitute the decision for another decision which could have been made by the Council; or
  - 2.1.3 remit the case to the Council to dispose of it in accordance with the direction of the Court; and
  - 2.1.4 make an order for costs as it sees fit.

#### PERSONNEL

- 3.1 None directly arising.

#### EQUALITIES IMPACT

- 4.1 None directly arising.

#### CORPORATE THEMES AND PRIORITIES FOR CHANGE

- 5.1 The Council's Statement of Licensing Policy used by General Licensing Sub Committee in determining applications contribute to the Council's objectives of **protecting and supporting people** and **a healthy environment**.