

**MONMOUTHSHIRE COUNTY COUNCIL  
REPORT**

<b>SUBJECT:</b> Application for a variation to the Premises Licence, The Kings Head Hotel (Including Regency 59 & The Coach House), 59 - 60 Cross Street, Abergavenny, Monmouthshire, NP7 5EU
<b>DIRECTORATE:</b> Social Care and Health
<b>MEETING:</b> Licensing & Regulatory Sub-Committee
<b>Date to be considered:</b> 13 <sup>th</sup> November 2020
<b>DIVISION/WARDS AFFECTED:</b> Priory Ward, Abergavenny

**1. PURPOSE:**

To consider an application for a Variation to the Premises Licence under the Licensing Act 2003 for The Kings Head Hotel, Cross Street, Abergavenny. Due to representations received against the licence application the Local Authority are required to hold a hearing to consider the application. A copy of the application with plans provided by the applicant is attached as Appendix A.

**2. RECOMMENDATION(S):**

- 2.1 It is recommended that Members consider and determine the application referred to in 3.1 below, based on the information provided;
- 2.2 Members of the sub-committee may determine to:-
- To grant the application to vary the current licence with the conditions specified in the application.
  - To grant the application to vary the current licence and modify any conditions the Council considers appropriate for the promotion of the licensing objectives.
  - To reject the whole or part of the application for variation to the current licence.

**3. KEY ISSUES**

- 3.1 A Variation application for a premises licence under the Licensing Act 2003 was received from Monmouthshire Limited on the 21<sup>st</sup> September 2020 for The Kings Head Hotel (Including Regency 59 & The Coach House), 59 - 60 Cross Street, Abergavenny for the following:-
- To extend the licensed area to include a new beer garden space at the rear of the property. Hours of beer garden use to be 10am to 11pm from the last week of March to the last week of October when the clocks change. During the winter for the rest of the year, the hours of use in the beer garden, will be 10am to 10pm. A plan showing the proposed beer garden with a red line is attached to the application in Appendix A.
  - To provide background music in the beer garden area.
  - To remove conditions 14, 15, 16, 17 and 23 from the current premises licence.
- 3.2 A copy of the current licence has been attached to this report as Appendix B. The applicant has requested removal of the following conditions;

*14.(a) All druggel, matting and other floor coverings shall be secured and maintained so that they will not be likely to ruck or to be in any way a source of danger.*

*15. Signs are displayed warning of the dangers of drink driving.*

*Conditions of Premises; Heating, Ventilations; Lavatories.*

*16. All parts of the premises and fittings therein, including the seating, door fastenings and notices, shall be maintained at all times in good order and condition.*

*17.(a) The public parts of the premises shall be kept properly and sufficiently ventilated and heated to the satisfaction of the Council.*

*(b) Every heating appliance used in the premises, which is so situated as to be within reach by any member of the public shall be fitted with guards to comply to standards of construction and fitting, required by the Heating Appliances (Fire Guard) Regulations 1953 or any amendment thereto in the case of heating appliances of a type which are so designed that they are suitable for use in residential premises.*

*(c) Without the consent of the Council in writing no portable heaters shall be used on the premises.*

*(d) Every heating appliance situated in part of the premises to which the public are admitted shall be fixed in position.*

*23. No music is permitted in the beer garden.*

- 3.3 The premises has mixed use and is currently trading as a Hotel with Restaurant and bar areas, to the side of the bar is a courtyard and to the rear a barn area known as “the coach house”.

The premises is located on Cross Street in the town centre, nearby is the Town Hall, Borough Theatre, cafes and a bank. To the rear of the premises is a car park, Kongs Chinese Restaurant and a number of residential properties. Usually Cross Street is an open road, however the road is now pedestrianised due to the coronavirus. Currently the road is closed from 10am to 4pm daily to allow businesses, including The Kings Head Hotel, to trade outside on the pavement and use a section of the carriageway.

- 3.4 The applicant within their operating schedule has outlined their arrangement under the four licensing objectives, and suggested the following conditions be attached to the new licence if granted;

- **General**  
All Staff will be suitably trained in maintaining the new area (beer garden). The area will be cleared at 11pm or 10pm as above.
- **The Prevention of Crime and Disorder**  
The new area (beer garden) will be sufficiently lit and any person behaving disruptively or suspiciously will be removed. A senior member of staff will be on site to implement.
- **Public Safety**  
There will be constant monitoring and adequate staff levels to ensure public safety at all times. Members of the public who are inebriated will not be given access to any licensable areas.
- **The Prevention of Public Nuisance**  
Background music will be kept to a level that will not cause customers to raise voices. Quantity of people on site will be kept to a reasonable level. Any person causing incidents will be removed.
- **The Protection of Children from Harm**  
Staff are all trained on ‘proof of age’ policy. Children will not be alone on the premises.

3.5 The applicant has a statutory duty to send copies of his/her premises application to the 'Responsible Authorities' namely Heddlu Gwent Police, South Wales Fire Service, The Local Health Board, Immigration and departments of Monmouthshire County Council. The Council sections are the Environmental Health section, Social Services, Planning, Licensing and Trading Standards departments. To assist applicants the Licensing Section also circulate a copy of the application and plan to the Responsible Authorities by email and this was completed. A Notice has also been circulated in a newspaper within the area of the premises by the Applicant.

A Public Notice must also be displayed at the premises to enable businesses and residents to make a representation. This Notice was inspected by Licensing who found the notice to be displayed correctly.

The application is also advertised via the Council's website, which gives details on how a person can make a representation.

3.6 Representations were received against the application from Heddlu Gwent Police requesting the applicant agree to accept alternative licence conditions. The applicant through mediation has agreed to accept the following conditions;

- The CCTV equipment shall be maintained in good working order and continually record when licensable activity takes place.
- The premises licence holder shall ensure images from the CCTV are retained for a period of 31 days. This image retention period may be reviewed as appropriate by the Licensing Authority and any other authorised person.
- The correct time and date will be generated onto both the recording and the real time image screen;
- If the CCTV equipment (including any mobile units in use at the premises) breaks down the Premises Licence Holder shall ensure the designated premises supervisor, or in his/her absence other responsible person, verbally informs the Licensing Authority and the Police as soon as is reasonably practicable. This information shall be contemporaneously recorded in the incident report register and shall include the time, date and means this was done and to whom the information was reported. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay. The Licensing Authority and the Police shall be informed when faults are rectified;
- The Premises Licence Holder shall ensure that there are trained members of staff available during licensable hours to be able to reproduce and download CCTV images into a removable format, at the request of any Authorised Officer of the Licensing Authority or a Constable;
- There shall be clear signage indicating that CCTV equipment is in use and recording at the premises.
- The Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, indicating the date, time and reason for refusal which shall be made available for inspection by any Responsible Authority under the Licensing Act 2003. The DPS shall check the book once a month ensuring that it is complete and up to date. The DPS will sign the book each time it is checked.
- The Premises Licence Holder shall operate and maintain an up-to-date incident book, detailing the time/date/individual involved /incident that has taken place. This shall be made available for inspection by any Responsible Authority under the Licensing Act 2003. The DPS shall check the book once a month ensuring that it is complete and up to date. The DPS will sign the book each time it is checked.

- The premises shall operate a Challenge 25 policy and signage will be displayed to indicate this is in operation. The age check shall be made by examining either a passport, photographic driving licence or a PASS approved proof of age card. No other form of identification shall be accepted.
- Fully documented staff training, to include training on the Premises Licence conditions as well as the premises' Challenge 25 Policy must be given. Training must be undertaken at regular intervals throughout the calendar year, at a minimum every 6 months. Staff must sign and date documentation at the conclusion of their training session, acknowledging that they have received and fully understood the training provided to them. This can be made for inspection by any Responsible Authority under the Licensing Act 2003.
- Signage shall be displayed requesting customers to leave the premises quietly and to have regard for neighbouring premises.
- Staff shall ensure that all litter is collected from outside the premises.

Heddlu Gwent Police removed their representations after the applicant agreed to accept all of the conditions provided above.

3.7 The Trading Standards section of Monmouthshire County Council requested the following condition be added to the licence;

- The premises shall operate a Challenge 25 policy and signage will be displayed to indicate this is in operation. The age check shall be made by examining either a passport, photographic driving licence or a PASS approved proof of age card. No other form of identification shall be accepted.
- The Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, indicating the date, time and reason for refusal which shall be made available for inspection by any Responsible Authority under the Licensing Act 2003. The DPS shall check the book once a month ensuring that it is complete and up to date. The DPS will sign the book each time it is checked.
- The Premises Licence holder shall operate and maintain an up-to-date incident book recording details of the incident that has taken place. The DPS must counter sign this incident book every 4 weeks and it shall be made available for inspection by any Responsible Authority under the Licensing Act 2003.
- Fully documented staff training, to include training on the Premises Licence conditions as well as the premises' Challenge 25 Policy must be given. Training must be undertaken at regular intervals throughout the calendar year, at a minimum every 6 months. Staff must sign and date documentation at the conclusion of their training session, acknowledging that they have received and fully understood the training provided to them.

The applicant has agreed to accept the conditions.

3.8 The following comments were received from Environmental Health;

I can advise that I do have reservations regarding the proposed 11pm finish during British summertime hours. This is because there are a number of dwellings within fairly close proximity, with the potential for raised voices of customers and music to be audible during late evening hours, which the nearby residents may consider disturbing.

However, there is also the potential for effective management of the beer garden area to minimise any noise impact. I do not therefore object to this application.

3.9 There were no representations or no response from the following Responsible Authorities;

- South Wales Fire Service
- The Local Health Board
- Social Services
- Planning
- Licensing

3.10 Representations from two local residents objecting to the licence, are attached as Appendix C. I have highlighted the main concerns as below:

- Noise pollution from music allegedly audible from the barn of the Kings Head Hotel previously.
- Possible anti-social behaviour from customers in the car park as experienced previously from The Malthouse, that is now trading as Kongs Chinese Restaurant.
- Request for earlier music cut off time.
- Request no music is audible at the car park.
- Request for no rear access to car park from beer garden and a wall be erected to prevent customers entering the car park.

3.11 Representations made under the Licensing Act 2003 must be made under the four key licensing objectives, namely:-

- The prevention of crime and disorder;
- Public Safety;
- The prevention of public nuisance; and
- The protection of children from harm.

3.12 When considering their decision members are asked to consider the licensing objectives guidance. Sections 2.1 – 2.21 of the Home Office revised guidance issued in April 2018 under section 182 of the Licensing Act 2003 are attached as Appendix D.

3.13 In accordance with 9.2 of the Home Office Guidance issued under Section 182 of the Licensing Act 2003. A hearing is not required where an application has been properly made and no responsible authority or other person has made a relevant representation or where representations are made and subsequently withdrawn. Licensing authorities should not hold hearings for uncontested applications, for example in situations where representations have been made and conditions have subsequently been agreed.

The Licensing Officer has written to residents informing them of the views of the applicant, explaining the applicant feels there will be no disturbance to local residents as applied for.

However, no representations have been withdrawn by local residents therefore a hearing is required.

3.14 Upon receipt of the representation from the local residents the applicant made a telephone call to the Licensing Officer to state the following;

In the view of the applicant, the background music will not cause disturbance to local residents. As an experienced licence holder who has managed licensed premises in the Abergavenny area for a number of years, he will ensure the beer garden area is managed effectively.

The applicant stated they have not had live music events in the barn at the rear of the property. This has been the position since November 2015 onwards, whilst he has been DPS, and his belief is the local residents may be hearing live bands performing in the Borough Theatre nearby, during the evenings.

3.15 Background music is not considered a regulated entertainment under the Licensing Act 2003. Background music is considered low level music played at a volume that does not cause a person to shout to be heard. The Live Music Act 2012 allows any licensed premises to have a performance of live music on the boundary of the licensed premises, including a beer garden, if performed to less than 200 people without the need for a licence. This entitlement may be removed subject to review against a premises licence if the licensing objectives are being undermined.

#### **4. REASONS:**

4.1 The determination of a Variation application is to be considered in accordance with Section 35 of the Licensing Act 2003.

4.2 In section 9.4 of the Guidance issued under section 182 of the Licensing Act 2003, the Secretary of State recommends that, a representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

4.3 In section 13.10 of the Guidance issued under Section 182. It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority’s statement of policy and this Guidance.

4.4 Monmouthshire County Council’s Policy sets out its views on the prevention of crime and disorder, prevention of public nuisance and public safety. The relevant sections 10 – 12.7 of the Policy issued 1<sup>st</sup> July 2020 are attached to this report as Appendix E.

#### **5. RESOURCE IMPLICATIONS:**

Nil

#### **6. CONSULTEES:**

Heddlu Gwent Police, South Wales Fire Service and the following departments from Monmouthshire County Council, namely, Environmental Health, Social Services, Planning, Trading Standards, Licensing and the Local Health Board

#### **7. BACKGROUND PAPERS:**

Licensing Act 2003

Guidance issued under Section 182 of the Licensing Act 2003 dated April 2018.  
Monmouthshire County Council’s Statement of Licensing Policy dated 1<sup>st</sup> July 2020.

Live Music Act 2012

#### **8. AUTHOR:**

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