

Agenda Item No:

Report No:

Report Title: Application for the review of the Premises Licence for
Cinque Ports 49 High Street Seaford BN25 1PP.

Report To: Licensing Sub-Committee. **Date:** 15 November 2010.

Report By: Director of Planning and Environmental Services.

Contact Officer(s): Tim Albright Environment and Health Manager.
Garry Clark, Licensing Officer.

1. The Application:

1.1 Applicant: Mr. Nicholas Neef 56 High Street, Seaford. BN25 1PP.

1.2 Type of Application:

Review of premises licence under the Licensing Act 2003 called by the above who is an interested party, namely a person living in the vicinity of the premises. His complaint is relevant and not vexatious, frivolous or repetitious.

1.3 Premises for Review:

The Cinque Ports public house 49 High Street, Seaford. Licence holder Punch Taverns PLC. Tenant and designated premises supervisor Mr Robert Thomsett.

1.4 Licensing Objectives Subject of Review:

Prevention of crime and disorder and the prevention of public nuisance.

1.5 Grounds for Review:

The following details have been submitted by the applicant Mr Neef in support of the application.

1. Before the new Licensing Laws came into effect and the smoking ban was introduced the Cinque Ports pub closed at 11pm.
2. In the past few years under the present landlord there has been excessive noise from patrons occupying the smoking area, live bands, karaoke and a disregard for the licensing laws.
3. The smoking area is frequently occupied up and beyond 12.45am at night with people swearing laughing and women screaming well into the night and early morning. It is impossible to sleep before 1am due to the noise created by people in the smoking area.
4. Live bands performing at the pub. Establishment not designed to host such activities. Impossible to hear television above the noise that is created. Double doors to the smoking area kept open so shutting of pub windows has little effect. Live bands finish by 11pm

– 11.30pm but common for juke box to be on after this time and turned up above a normal level and noise level carries on well past midnight.

5. Six tape recordings enclosed with application (VHS) which demonstrates the level of noise that is created.
6. Main concerns are the noise from the smoking area until the early hours and excessive noise from live bands and karaoke. There are minor irritations from taxis people wandering in the street and sitting on our front wall using phones and general noise from revellers when vacating the premises late at night.
7. In the circumstances premises should not hold a late licence in a largely residential area and its activities are clearly causing residents both mental and physical distress.

1.6 Diary Sheets:

Diary sheets have been provided to the applicant prior to the submission of the review application to detail the record of alleged disorder and nuisance from the premises and these cover a period from 3 September to 17 September 2010 and are attached together with the review application and supporting evidence. Appendix 1.

2. Statutory Requirements:

- 2.1 The Licensing Act 2003 (Premises Licenses and Club Premises Certificates) Regulations 2005 prescribe that a Regulation 38 notice advertising the review is attached to the premises and displayed on the Council notice board at Lewes and on the Council web site. I can confirm that the notices have been properly displayed at each of these locations and it has been placed on our web site for the statutory 28 day period from 23 September 2010. Appendix 2.

3. Representations. Interested Parties:

- 3.1 Letters received within the relevant 28 day notice period wishing to make representations about the application are attached Appendix 3. There are eight written representations concerning crime and disorder and public nuisance from three residents living in the vicinity. They are considered relevant and not vexatious or frivolous.
 1. Mr Geoffrey Cox 60 High Street, Seaford BN25 1PP. Statement letter and diary sheets for period 19 June to 21 September 2010.
 2. Sandra Chessum 3 Crouch Lane Seaford BN25 1PS. Review application and supporting statement. (Papers not served on other responsible authorities).
 3. Mr Brian Williams 52 High Street Seaford BN25 1PP. Statement letter.
 4. Miss Susan Berry 58 High Street Seaford BN25 1PP. Statement letter.
 5. Margaret Thompson 27 East Street Seaford BN25 1AA and Lorraine Stafford 53 High Street Seaford BN25 1PP. Joint statement letter.
 6. Mr Robert & Caroline Mikolay 62 High Street Seaford BN25 1PP. Email statement.

3.2. In addition we have received two letters of support regarding the Cinque Ports from three Seaford residents. They do not reside in the vicinity of the premises but wish to highlight the good work undertaken by the pub in support of the community. These are attached at Appendix 4.

4. Representations. Environment and Health:

4.1 Environment and Health have made representations under the public nuisance objective relating to the Cinque Ports and their evidence and supporting documentation is attached. Appendix 5.

5. Other Responsible Authorities:

5.1 The following responsible authorities have been sent notification of the review application by the applicant and the response from the authorities concerned is as follows:

5.1.1	Police:	No comment.
5.1.2	Fire Officer:	No comment.
5.1.3	ESCC – Child protection:	No comment.
5.1.4	Trading Standards:	No comment.
5.1.5	Health and Safety:	No comment.
5.1.6	Planning:	No comment.

6. Licensing Officers Inspections:

6.1 The Lewes District Council Licensing Officer has visited the premises as part of his licensing duties on 24 January 2008 and on 21 June 2010 and carried out a formal inspection of the premises and licence. The inspection was satisfactory and the regulatory requirements and conditions were found to be in order other than minor infringements relating to the display of posters. As a result of his inspections he considered there were a number of inappropriate conditions attached to the licence and advised the tenant and DPS Mr Thomsett. He recommended a minor variation application to remove and amend the operating schedule conditions under the licensing objectives as appropriate.

6.2 On 2 September 2010 the Licensing Officer visited the premises and spoke with the tenant and DPS Mr Thomsett regarding a complaint to him from a resident Mr Neef who lives opposite the pub. This was about the outside yard area used for smoking and the excessive noise nuisance and poor behaviour of pub customers using this area especially late at night. Mr Thomsett and the licence holders Punch Taverns were sent a letter detailing the Licensing Officers visit and his concerns about the management of the premises and the outside area. This letter is attached. Appendix 6.

7. Reviewed Premises. Cinque Ports:

7.1 Licensable Activities authorised by the premises licence:

Opening Hours. Monday to Saturday 10am to 12.30am. Sunday 11am to 12midnight.

Non standard timings: A further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May bank holiday, Spring/Whitsun bank holiday and every August bank holiday weekend. A further additional hour into the morning following every Thursday, Friday, Saturday Sunday and Monday for the Easter bank holiday weekend. An additional hour every Christmas Eve. An additional hour every Boxing Day. On New Years Eve from the end of hours on New Years Eve to the start of permitted hours on the following day. One hour before, until one hour after live televised international football and rugby matches involving a UK national team.

Sale by retail of alcohol. Monday to Saturday 10am to 12 midnight. Sunday 11am until 11.30pm. On and off premises.

Non standard timings. As previously stated under opening hours.

Indoor sporting events. Monday to Saturday 10am to 12 midnight. Sunday 11am to 11.30pm.

Non standard timings. Non standard timings: A further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May bank holiday, Spring/Whitsun bank holiday and every August bank holiday weekend. A further additional hour into the morning following every Thursday, Friday, Saturday Sunday and Monday for the Easter bank holiday weekend. An additional hour every Christmas Eve. An additional hour every Boxing Day. On New Years Eve from the end of hours on New Years Eve to the start of permitted hours on the following day.

Live music (indoors). Monday to Saturday 10am to 12 midnight. Sunday 11am to 11.30pm.

Non standard timings. As previously stated under indoor sporting events.

Recorded music (indoors). Monday to Saturday 10am to 12.30am. Sunday 11am to 12 midnight.

Non standard timings. As previously stated under indoor sporting events.

Provision of facilities for entertainment of a similar description to that for making music and dancing (indoors). Monday to Saturday 10am to 12 midnight. Sunday 11am to 11.30pm.

Non standard timings. As previously stated under indoor sporting events.

Provision of late night refreshments (indoors). The licence may also provide and permit the consumption of late night refreshment Monday to Saturday from 11pm to 11.30pm (excluding Good Friday and Christmas Day), and on New Years Eve until 5am New Years Day.

8. Conditions consistent with the Operating Schedule:

8.1 General:

30 minute 'drinking up' time will allow appropriate dispersal, use of lavatories etc.

In order to further the licensing objectives the management reserves the right to move the fire appliances, AWP machines, cigarette machines and

or any other similar objects temporarily in a fixed location which may impact on the ability of individuals on the premises to use exits or escape routes without impediment.

8.2 The prevention of crime and disorder:

The management are members of Pub Watch and regularly attend meetings. Liaison with local police is frequent.

Majority of customers are local people and well known to the management and staff.

All interior trading areas are visible to staff from behind the bar servery.

The management and staff monitor customer behaviour especially during busy periods.

Burglar alarm system in place, alarmed doors and windows / secure windows.

There is always a minimum of two staff on duty at any one time.

Toilets access is clearly visible from the bar.

Drug prevention measures are employed and signs displayed.

Drivers 'shelf' with selection of soft drinks. Drink drive posters on site.

The exterior of the premises is well lit with street and exterior lighting at the front and exterior lighting at the side. The exterior is regularly inspected.

Regular inspections of the courtyard are undertaken during all sessions.

There is regular supervision of persons entering and leaving the premises during busy sessions.

Regular inspections of the toilets are undertaken during all sessions.

Local police station number is kept behind the bar at all times.

All staff have been trained on our drugs awareness policy and alcohol sales regarding underage and intoxicated persons.

No glasses or open bottles are permitted to be taken from the premises.

We will continue to use toughened glass for all purchases, where possible.

8.3 Public safety:

Health and Safety policy in place and adhered to.

There is currently 1 member of staff who has gained their National Licensee Certificate.

The pub is equipped with emergency lighting, illuminated exit signs.

All fire fighting equipment is serviced annually and there is a contract in place with Pyrotech Ltd.

All portable electrical appliances are tested annually.

There are current electric and gas certificates in place.

Mechanical smoke extraction is provided in the bar. Complies with smoking charter.

The pub has a first aider and first aid facilities which are replenished as required.

The pub promotes a licensed taxi service to facilitate its customers making onward journeys.

Accident / incident book on site for staff and public.

5 staff hold Basic Food Hygiene certificates.

Staff are trained in our disability policy and assistance is always available.

8.4 The prevention of public nuisance:

All entrance doors have internal lobbies to prevent noise transference.

A noise survey is carried regularly and all curtains, windows and doors are shut when entertainment is being provided.

When required, staff organise taxis to transport customers home and customers are seen off the premises promptly and encouraged to disperse at closing. The potential for noise and boisterous behaviour often created by televised sporting events is minimised by staff vigilance and control.

Public transport helps with the dispersal of patrons.

All glassware is toughened.

The Pub has a lobbied entrance which reduces noise emission.

Customers are locals and generally walking straight home. The pub does not have any aggressive drinks promotions (ie. 2-4-1's, heavy discounting/happy hours).

The only fast food outlet in the vicinity closes before the pub, therefore limited loitering around the pub.

Cellar cooling condenser is positioned in an area so as not to cause nuisance to neighbours.

Pub is traditional locals site most of the customers are mature, ie not rowdy youngsters.

We will continue to request that customers leave the premises quietly at all times.

We will continue to ensure that customers in the outside drinking area are regularly reminded about noise pollution.

No consumption of alcohol or licensable activities to take place externally after 11.30pm with the exception of Bank Holiday Friday, Saturday and Monday after 12.30am (the following morning) and Bank Holiday Sunday after 12 midnight.

8.5 The protection of children from harm:

Unaccompanied children are not permitted on the premises and no

Children are permitted on the premises after 8.30pm. The outside area is completely enclosed and accessed through the Lounge bar. Children are not permitted in the bar, save access to garden and use of toilets.

AWP is positioned in sight of the bar counter. The AWP and Cigarette machine are adjacent to one another and in close proximity to the bar counter and therefore easily observed. Pub has children's menu and suitable soft drinks to promote family atmosphere. All staff are trained in legislation regarding the sale of alcohol to children and are required to ask for relevant ID if unsure about a customer's age.

9. Cinque Ports. Background Information:

- 9.1** The current licence for the premises was granted on 1 August 2005 after an application for conversion and simultaneous variation under the provisions of the Licensing Act 2003. The variation extended the licensing hours for alcohol and provided for additional licensable activities under regulated entertainment. There were no objections by residents in the vicinity or authorities to the application by Punch Taverns and

subsequently the current tenant Mr Thomsett was placed on the licence as the designated premises supervisor on 13 December 2006.

- 9.2** The Cinque Ports is a medium to small size public house situated in an area of residential properties along with some business premises and retail outlets in the old Seaford High Street area near to the town centre and the main shopping outlets. The premises have a ground floor open plan bar to the front and to both sides with a rear lounge area. To the side is a small external yard with double doors that serves as the pub smoking area. It is covered and has tables and chairs for customers use and the consumption of alcohol. Entrance to the premises is at the front from the High Street pavement and there is a lobby and doors between the street and bar area.
- 9.3** The public house serves substantial food/table meals throughout the day and early evening together with the normal pub drinking environment through to closing time. It has regular entertainment at weekends by way of live bands, recorded music and karaoke which take place in the main front bar area.
- 9.4** Since the smoking ban in July 2007 the small side yard area has been refurbished with heaters and furniture to accommodate the pub customers who smoke and is well used by smokers and non smoking customers alike throughout the year. The Licensing Officer considers this area by reason of the smoking ban and its close proximity to the main bar has become a 'de facto' extension of the bar area. It can be particularly busy during the evenings at weekends and with the double doors being kept open allowing music and pub noise to go out onto the street adds to the potential for public nuisance.
- 9.5** The Licensing Officer is aware of the complaints from residents in the surrounding properties and he has consulted with the DPS Mr Thomsett on several occasions since he arrived at the pub to offer advice and guidance to minimise the risk of further complaints and in particular with regard to the outside smoking area. The resolution to this problem, in the view of the Licensing Officer, relating to customer noise and behaviour in this area is highlighted in his letter to Mr Thomsett of 3 September 2010. Appendix 6.
- 9.6** It is important to stress that there is already a condition on the licence under public nuisance which states, 'no consumption of alcohol or licensable activities to take place externally after 11.30pm with the exception of bank holiday Friday, Saturday and Monday after 12.30am and bank holiday Sunday after 12 midnight.' This condition was added to the licence by the licence holders in May 2007 by way of a licence variation to support the public nuisance licensing objective and the use of the outside smoking area. It would appear from neighbour's comments and the conduct of customers late at night that this condition is not being enforced with regard to the consumption of alcohol in this area after 11.30pm.

10. Licensing Policy Considerations:

10.1 Lewes District Council has produced a Statement of Licensing Policy in order to comply with its duties and powers under the Licensing Act 2003. It covers the licensable activities for retail sale of alcohol, regulated entertainment and late night refreshment which are the activities authorised by the licence for the Cinque Ports.

10.2 The aims of the Policy are to secure the safety and amenity of residential communities, help to ensure a sustainable environment, and to provide regulation of the cultural/entertainment industry and to promote the four Licensing Objectives of the Act. Namely;

- Prevention of crime and disorder
- Public Safety
- Prevention of public nuisance
- Protection of children from harm

10.3 The three guiding principles (set out in Paragraph 4 of the Licensing Policy) adopted by the Council as the Licensing Authority serve as a general guide to the Council when it carries out its licensing functions.

10.4 In each case that arises following representations the Policy states the Council will:

- a) Consider the potential for public nuisance, crime and disorder and/or danger to public safety associated with the style, characteristics and activities of the business involved and the rights of local residents to peace and quiet.
- b) Examine the potential steps which could be taken to reduce the risk of public nuisance, crime and disorder and/or danger to public safety, particularly in areas of dense residential accommodation.
- c) Consider restricting the hours of trading only in cases where there are good grounds for believing that the licensing objectives will be or are being undermined.

10.5 The proceedings set out in the 2003 Act for reviewing premises licenses represent a key protector for the community where problems associated with crime and disorder, public safety, public nuisance and the protection of children from harm are occurring.

Following the grant of a premises licence a responsible authority such as the Police, or the Fire Authority or an interested party, such as a resident living in the vicinity of the premises, may ask the Council to review the licence because of matters arising at the premises in connection with any of the four licensing objectives.

In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives.

11. National Guidance:

- 11.1** Guidance issued under Section 182 of the Licensing Act 2003 refers to the powers of the Licensing Authority on the determination of a review. The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.
- 11.2** The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.
- 11.3** Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:
- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management.
 - to suspend the licence for a period not exceeding 3 months;
 - to revoke the licence.
- 11.4** In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

- 11.5** For example, licensing authorities should be alive to the possibility that 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 poor management decisions made by that individual.
- 11.6** Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.
- 11.7** Licensing Authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives.
- 11.8** The Council may tailor its own conditions or draw from the model conditions contained in the Guidance under annex D part 1, relating to crime and disorder and part 2, relating to public nuisance.

12. Financial Implications:

There are no financial implications to this report.

13. Environmental Implications:

I have completed the Environmental Implications questionnaire and there are no significant effects as a result of these recommendations.

14. Risk Management Implications:

I have completed a Risk Management questionnaire and the report does not require a risk assessment.

15. Background Papers:

Statement of Licensing Policy.
Pool of Conditions Annex D.
Copy of Licence for the Cinque Ports 49 High Street Seaford.

16. Appendices:

Appendix 1. Application for review of premises licence and diary sheets from Mr Neef.

Appendix 2. Copy of Regulation 38 notice.

Appendix 3. Statements of representations from other interested parties.

Appendix 4. Letters of support from Seaford residents.

Appendix 5. Representation report from Senior Environmental Health Officer detailing the involvement of the Council's Environment and Health Department.

Appendix 6. Licensing Officers letter to Mr Thomsett of 3 September 2010.

17. Plans:

Plan of premises layout for the Cinque Ports.

Street plan of premises location 49 High Street, Seaford.

Photographs of the Cinque Ports and the High Street.