

BABERGH DISTRICT COUNCIL

From: Place Directorate	Report Number: M13
To: Licensing Sub-Committee	Date of meeting: 03 MAY 2012

LICENSING ACT 2003 – CONSIDERATION OF THE WITHDRAWAL OF A CLUB PREMISES CERTIFICATE PURSUANT TO SECTION 90

1. Purpose of Report

- 1.1 To report information to the Sub-Committee to enable consideration of whether to give notice of the Licensing Authority's intention to withdraw Club Premises Certificate (number BCP0020) currently on issue to Northcroft Social Club, 1 The Croft, SUDBURY, Suffolk CO10 1HN.

2. Recommendations

- 2.1 That the Sub-Committee consider the matter and if satisfied that the Northcroft Social Club has ceased to meet the requirements specified by general condition 3 of section 62 of the Licensing Act 2003 – to be established and conducted in good faith as a club - to issue the Club with a Notice pursuant to section 90 of the Licensing Act 2003 to withdraw Club Premises Certificate BCP0020.
- 2.2 The Sub-Committee is able to resolve this matter.

3. Financial Implications

- 3.1 There is a statutory right of appeal to the magistrates' court for the removal of a club premises certificate.

4. Risk Management

- 4.1 None, other than those that inherently apply to the Licensing Authority when carrying out its licensing functions. The four licensing objectives are prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm.

5. Consultations

- 5.1 Not applicable.

6. Equality Analysis

- 6.1 Not applicable.

7. Shared Service / Partnership Implications

- 7.1 Not applicable.

8. Key Information

- 8.1 Northcroft Social Club has held a club premises certificate issued by Babergh District Council since implementation of the Licensing Act 2003 in 2005. Prior to then it held a club registration with the magistrates' court under the provisions of the Licensing Act 1964.
- 8.2 Section 62 of the 2003 Act sets out five general conditions which a relevant club must meet to be a qualifying club. The third general condition (Section 62(4)) is that a club should be established and conducted in 'good faith' as a club. This is expanded upon by Section 63 which sets out specific matters for licensing authorities to consider in determining whether the 'good faith' condition is met. It is suggested that the element of particular relevance here is 63(2)(e) "the nature of the premises occupied by the club". Section 63 is reproduced as Appendix A. Section 64 sets out additional conditions which only need to be met by clubs intending to supply alcohol to members and guests.
- 8.3 Section 90 of the 2003 Act gives powers to the Licensing Authority to issue a notice to a club withdrawing its certificate where it appears that it has ceased to meet the qualifying conditions. There is a right of appeal against such a decision.
- 8.4 The club premises certificate permission only permits the club to sell and supply alcohol, or provide other regulated activity, to its members and bona fide guests. Any qualifying club may choose to obtain a premises licence where it wishes to offer its facilities commercially for use by the general public. The temporary event notice (TEN) system may also be used to authorise one-off occasions.
- 8.5 The Council has had cause to contact the Northcroft Social Club in December 2011 about various matters including licensing issues. Clear advice has been given in writing to the club management, and since acknowledged, which made clear reference to licensing requirements. This correspondence is attached as Appendix B.
- 8.6 The Council received a further complaint on 02 April 2012 alleging the club were to imminently operate a 'public' event, as being advertised on a social networking site, which would be contrary to its current licence permission. The Licensing Team duly checked the Council's licensing register and found no record of any temporary event notice in place for that date/event. The matter was referred accordingly to the Council's enforcement team.
- 8.7 Upon further investigation, officers of the Council's enforcement team established that a drum'n'bass type event to be held at the Northcroft Social Club on Sunday 08 April 2012 was being advertised as being open to the general public to attend. The Council's Principal Environmental Protection Officer wrote to the Club on 04 April 2012 giving a further warning that the Council would treat any such events as a serious contravention of its club premises certificate. This correspondence is attached as Appendix C.

- 8.8 Members of the Council's Enforcement Team attended the Northcroft Social Club premises on the evening of Sunday 08 April 2012 and found the club facilities to be open to the general public and a drum'n'bass type event taking place, with a pay bar in operation, for around 120 persons including members of the public. Many of the attendees appeared to be in the 20-30 year old age range. The Council's Principal Environmental Protection Officer, who attended the club on 08 April 2012, will attend the hearing and produce his findings to the Sub-Committee.
- 8.9 Only 'qualifying' clubs may hold club premises certificates and be entitled to the benefits permitted by such an authorisation. Where it appears to the Licensing Authority that the club has ceased to meet the qualifying conditions, section 90 of the Licensing Act 2003 gives it the power to give notice to the club withdrawing the certificate.
- 8.10 Section 6.8 of the statutory guidance issued under section 182 of the Licensing Act 2003 advises that a point may be reached where a club is providing commercial services to the general public in a way that is contrary to its qualifying club status, at which point the club would no longer be conducted in 'good faith' and would no longer meet general condition 3 for qualifying clubs in section 62 of the 2003 Act.

9. Appendices

Title	Location
A: Section 63 of the Licensing Act 2003	Attached
B: Correspondence dated 15 December 2011 between the Council's Principal Environmental Protection Officer and Northcroft Social Club	Attached
C: Correspondence dated 04 April 2012 between the Council's Principal Environmental Protection Officer and Northcroft Social Club	Attached

10. Background Documents

- 10.1 Guidance issued under section 182 of the Licensing Act 2003 (October 2010 revision)

Authorship:

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Licensing Officer to the Council

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63 Determining whether a club is established and conducted in good faith

- (1) In determining for the purposes of condition 3 in subsection (4) of section 62 whether a club is established and conducted in good faith as a club, the matters to be taken into account are those specified in subsection (2).
- (2) Those matters are—
 - (a) any arrangements restricting the club's freedom of purchase of alcohol;
 - (b) any provision in the rules, or arrangements, under which—
 - (i) money or property of the club, or
 - (ii) any gain arising from the carrying on of the club,is or may be applied otherwise than for the benefit of the club as a whole or for charitable, benevolent or political purposes;
 - (c) the arrangements for giving members information about the finances of the club;
 - (d) the books of account and other records kept to ensure the accuracy of that information;
 - (e) the nature of the premises occupied by the club.
- (3) If a licensing authority decides for any purpose of this Act that a club does not satisfy condition 3 in subsection (4) of section 62, the authority must give the club notice of the decision and of the reasons for it.



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Culture and Sport for
Hard to Reach Groups

Malcolm Firth B.Sc. MCIEH
Head of Natural and Built Environment
Babergh District Council
Corks Lane, Hadleigh, Ipswich IP7 6SJ

DX NO: 85055 Exchange: Babergh
Website: www.babergh.gov.uk

Mr D Dreyer
Northcroft Social Club
1 The Croft
SUDBURY
CO10 1HN

Your Ref:
My Ref: WK/122449

Please ask for: James Buckingham
Phone Direct Line: 01473 825880 ☎
Fax: 01473 825738
Email: james.buckingham@babergh.gov.uk

15 December 2011

Dear Mr Dreyer

**[REDACTED] LICENSING ACT 2003; GAMBLING ACT 2005
NORTHCROFT SOCIAL CLUB, 1 THE CROFT, SUDBURY**

I write to confirm the details of our meeting on 7 December 2011 regarding **[REDACTED]** and licensing issues.

REDACTED INFORMATION

REDACTED INFORMATION

REDACTED INFORMATION

REDACTED INFORMATION

REDACTED INFORMATION

Licensing Issues

As advised during our meeting, the Council has received an allegation that the Club is holding various events throughout the week including poker nights, bingo, quiz nights and live bands, all of which are being advertised as being free entry and available to non-members across such social network sights as Facebook. Whilst I am not in a position to substantiate this allegation, you should be aware that the Club is only authorised to carry out certain licensable activities under your Club Premises Certificate and Club Machine Permit. Neither of these permissions extend to providing licensable activities or gaming to the public.

A copy of your Club Premises Certificate is enclosed which lists the activities (on the first page) which the Club is authorised to carry out. This means that whenever licensable activities are being carried out, the Club, which is considered private premises under the relevant legislation, should only be open

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to Club members and bona fide guests and not to the general public. Any guests must be genuine guests and not members of the public being signed-in by members as a way of "getting around the rules".

During our meeting you admitted that the Club allows the first floor function room to be used by the general public for private parties/discos. Although the Club does not charge a fee for doing this, it does take any profits from the bar. The Club is only authorised to supply alcohol and play recorded music to its members and their guests, and so if this practice were to continue, the Club would commit an offence, for which it could be prosecuted. I would therefore strongly advise you not to proceed with any such events in the future.

If the Club would like to be able to hire its facilities to the general public in the future, it may apply for 'Temporary Event Notices' (up to 12 per year) or a permanent 'Premises Licence' to authorise the events. Further details on how to apply for these may be obtained from the Council's Licensing section (tel. 01473 826658).

Under the Gambling Act 2005, a members' club is a club that is not established as a commercial enterprise, and is conducted for the benefit of its members. Your club must not therefore hold poker, bingo or other gaming events which are open to the general public and played for cash stakes/prizes.

Members clubs do benefit from an exemption under the legislation which allows them to hold gaming events (poker, bingo etc.) for their members and their guests. However, regulations set out the maximum stakes and prize limits that apply to these exempt gaming activities in members' clubs – these are detailed in the enclosed "Summary of gaming entitlements for clubs and alcohol-licensed premises". Your Club holds a Club Machine Permit and I have highlighted the limits/stakes/fees which must not be exceeded.

Your Club's Gaming Machine Permit is for the benefit of the Club members. The machines licensed under the permit should therefore be switched off and made unavailable for use if the premises were to be used by members of the general public (for example during a TENS hiring).

As you have admitted that the Club has held events/activities for which the Club is not currently licensed, I am obliged to inform you of the potential consequences if you continue to breach the legislation. These are:

1. Under the Licensing Act 2003, qualifying Clubs are given some allowances in comparison to normal premises licensing requirements. However, maintaining the benefit of holding a Club Premises Certificate relies heavily on the Club maintaining its qualifying Club status, properly controlling its business and activities through its own constitution and rules and ensuring that these are compatible with the key requirements of licensing law and general conditions. In this respect, it is a fundamental general condition requirement under the legislation for any qualifying Club (specifically Sections 62(4) and 63) to operate as a Club "in good faith". If members of the general public are able to use your premises then it is likely that the Licensing Authority would consider that you are not operating in good faith as a Club. The Licensing Authority has powers under Section 63(3) of the Licensing Act to remove a Club Premises Certificate where it determines that the "good faith" condition is not being satisfied by the Club.
2. If the conditions of a Club Premises Certificate are breached or licensable activities are carried on without the appropriate licence, then responsible persons on behalf of the Club could be prosecuted in the courts and would render themselves liable to a fine of up to £20,000 and/or 6 month imprisonment.
3. Responsible Authorities under the Licensing Act 2003 such as the Police and Environmental Health and also local residents and businesses (as "Interested Parties") may call a Club Premises


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Chief Executive: Charlie Adan

Deputy Chief Executive: Mike Hammond

Director of Corporate Services: Andrew Hunkin

Director of Finance: Barry Hunter

 Minicom: 01473 825878 (Minicom is a text phone service for the deaf, hard of hearing and speech impaired)

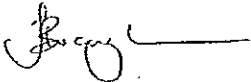
Certificate in for review at any time if there are problems concerning the operation of the Club. If this action were to be taken, the Council's Licensing Sub-Committee would review your Club Premises Certificate and could amend its conditions or suspend or revoke it entirely.

4. A person found guilty in the courts of providing gambling facilities without a licence/permit, of using premises to provide gambling facilities without a licence/permit, or of making a gaming machine available for use by another otherwise than in accordance with a licence/permit, is liable to a fine of up to £5,000 and/or 51 weeks imprisonment.

We will be obliged to investigate any further complaints we receive alleging that unlicensed activities are taking place, or that the conditions of the Club's Premises Certificate or Club Machine Permit are being breached. We also carry out unannounced inspections where considered appropriate. I would therefore urge you to adhere to the guidance given above.

I accept that the legal requirements can seem complex, so if you have any queries, then please do not hesitate to contact me. I look forward to hearing from you within the next 7 days regarding the noise issues.

Yours sincerely



James Buckingham
Principal Environmental Protection Officer

