

North Yorkshire Council

Statutory Licensing Sub-Committee

23 May 2023

Application for Review of a Premises Licence – JK’s Bar, Wellington Road, Whitby, YO21 1DY

Report of the Corporate Director of Environment – Karl Battersby

1. PURPOSE OF REPORT

To seek the determination by the Statutory Licensing Sub-Committee of an application for the review of a Premises Licence.

2. INTRODUCTION

- 2.1 An application for the review of a Premises Licence under Section 51 of the Licensing Act 2003 has been received from North Yorkshire Police on 12 April 2023, full details including appendices for the review are set out in **Appendix A**. A copy of the current Premises Licence (PL0389) detailing the existing permitted activities, timings and conditions is attached at **Appendix B**.
- 2.2 A copy of the application was served on the holder of the Premises Licence and all Responsible Authorities on 12 April 2023. Following receipt of the application, the Licensing Authority advertised the application, thereby inviting representations to be made by Responsible Authorities and other persons between 13 April 2023 and the end of consultation midnight 10 May 2023.

3. GROUNDS FOR REVIEW

- 3.1 The review relates to the following licensing objectives:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance

- 3.2 The applicant states the grounds for their review are as follows:

“Since June 2022 North Yorkshire Police have responded to various incidents involving Disorder, Anti-Social Behaviour and offences under Section 136 of The Licensing Act 2003 at JK’s Bar, Wellington Road, Whitby. The Alcohol Licensing Unit has engaged with the operator, attended meetings and implemented a Premises Improvement Plan in line with The Home Office recognised ‘A Stepped approach to achieving compliance’ but despite these

interventions JK's Bar continues to undermine the Licensing Objectives, specifically :-

- The Prevention of Crime and Disorder
- Public Safety &
- The Prevention of Public Nuisance

Due to the continuing issues the police see no alternative but to instigate formal review proceedings to enable the licensing authority to deal with the matter at the earliest opportunity”.

Members will note that the matters raised by North Yorkshire Police are expanded upon in **Appendix A** which encompasses and application form and a number of additional supporting documents.

4. REPRESENTATIONS

4.1 Five relevant representations were received including one representation from a Responsible Authority, The North Yorkshire Fire Rescue Service, who have very recently inspected the premises to undertake a fire audit. They have sent an email setting out a number of concerns and also setting a deadline for the specified matters to be formally addressed.

4.2 The Licensing Authority has received representations on this application from as above including other persons and are all are set out in **Appendix C**.

4.3 Representations are in line with the following Licensing Objectives:

- Public Safety
- Prevention of Public Nuisance

4.4 The grounds for the representations from the Responsible Authority and other persons are summarised below:

- 1) Concerns regarding the failure to prepare a current Fire Risk Assessment
- 2) An ability to be able to specify a premises permitted occupancy figure
- 3) Concerns regarding the lack of records relating to mandatory fire alarm testing, emergency lighting testing, firefighting equipment testing and staff fire training. The premises has until the 12/5/23 to supply various requested documents to the Fire and Rescue Service.
- 4) Requests have been made for information about the buildings fire separation.
- 5) Allegations of drunken persons frequenting the premises including the day-time
- 6) Concerns regarding the intimidation of families and persons passing the premises by patrons frequenting the premises.
- 7) Matters relating to anti-social behaviour and public nuisance.
- 8) Loud music adversely affecting neighbouring premises and the staff working there
- 9) Patrons of the premises gathering outside neighbouring premises noisily and engaging in matters that may risk public disorder.

- 10) The adverse behaviour of patrons, in particular larger groups, stag and hen parties are highlighted including the issues of bad language too.
- 11) Incidents of altercations are highlighted as worrying matters.

4.5 Members are advised that the following reactionary licensing inspection was conducted;

- 1) 3 November 2022 - Non-Compliant (Ref AF) a joint agency licensing inspection. A deadline of 10 November 2022 was issued to address the issues identified; a lack of staff training and training records in relation to the Licensing Act 2003, the 4 Licensing Objectives and all of the Premises Licence conditions. The rear fire exit was obstructed by an armchair and the Premises Licence was suspended that same day due to a failure to pay the mandatory annual fee.

Letters in Support

4.6 The Licensing Authority has received no letters/representations that are in support of the Premises Licence Holder.

5. LICENSING POLICY, AND DCMS NATIONAL GUIDANCE

5.1 Members are referred to the whole of the **Scarborough Locality Statement of Licensing Policy** as set out in **Appendix D** and will note that page 11 addresses several points as follows;

“3.24 Responsible authorities and other persons may apply to review a licence or certificate where it is believed an operator of a licensed premises is in their opinion managing their business in a manner that does not promote one or more of the licensing objectives”.

“3.25 Examples of triggers for a review may be: continual complaints of noise from or in the vicinity of the premises; continual complaints of noise or intimidation from customers outside the premises; an accumulation of breaches of licensing conditions; poor management where the licensing objectives are undermined; underage sales of alcohol (persistent or otherwise); crime-related activity; anti-social behaviour; sales of alcohol outside of the permitted hours; consideration of the track record/history of a premises; any safeguarding concerns identified relating to children, young people or vulnerable adults; and the persistent or otherwise sales of alcohol to drunken or disorderly individuals, etc”.

5.2 Members are referred to the **Home Office Amended Guidance issued under s182 of the Licensing Act 2003** (as amended 2022). This guidance has been recently reviewed to emphasise its importance and direct that it should be followed.

5.3 Members will note that this guidance at Section 1 highlights issues relating to some key aims as follows:

“1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work”.

Two subsequent paragraphs highlight some factors relating to “community involvement” and “protecting the public”;

- *“protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises”*
- *“encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them”.*

Members will note that this same guidance at Section 11 also addresses the Review Procedure as follows:

“11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives”.

6. OPTIONS

- 6.1 In the case of a review of Premises Licence the Statutory Licensing Sub-Committee may choose to employ one or more of the following options:
- a) to modify the conditions or hours of the licence
 - b) to exclude from the Licence a licensable activity
 - c) to disapply the provisions of the Live Music Act 2012 (quoting the relevant legislation)
 - d) to remove the Designated Premises Supervisor
 - e) to suspend the licence for a period not exceeding three months
 - f) to revoke the licence
 - g) to leave the licence in its existing state
- 6.2 In relation to paragraph a) and b) above, the Statutory Licensing Sub-Committee has the power under Section 52(6) of the Licensing Act 2003 to provide that the modification and exclusion may only have effect for a limited period not exceeding three months.
- 6.3 In relation to paragraph c) above, Members may decide, in accordance with s177A(3) of the Licensing Act 2003 (as amended by the Live Music Act 2012) to state that s177A of the Act 2003 Act does not apply to this premises licence. By doing so Members will disapply the provisions of the Live Music Act, thereby reinstating live music as an activity to which the Premises Licence applies.

7. DETERMINATION OF THE APPLICATION

- 7.1 Under section 17 of the Crime and Disorder Act 1998 (CDA), the Council has a duty to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent, crime and disorder in its area.
- 7.2 Members must also exercise their decision making powers in accordance with the provisions of the Human Rights Act 1998, and the principles of natural justice.
- 7.3 Members are invited to determine this application following consideration of the evidence presented to them. The procedure for this hearing will be available on the day of the hearing.
- 7.4 In accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations the hearing shall take place in public. Reg 14(2) states that the Licensing Authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
- 7.5 The statement of licensing policy of the former Council, Scarborough Borough Council, should be considered by the sub – committee. This is the case until the North Yorkshire Council has devised and approved a Licensing Policy relating to licensed premises.

8. RIGHT OF APPEAL

- 8.1 The applicant has a right of appeal to the Magistrates' Court against the Statutory Licensing Sub-Committee's decision within 21 days from receipt of the determination.

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IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT THE AUTHOR.

List of Background Papers:

Council's Statement of Licensing Policy

Licensing Act 2003

National Guidance issued under section 182 of the Licensing Act 2003
Relevant Regulations associated with the Licensing Act 2003

APPENDICES:

Appendix A – Application Details

Appendix B – Current Premises Licence

Appendix C – Representations

Appendix D – Statement of Licensing Policy (Scarborough Borough Council)