

North Yorkshire Council

Statutory Licensing and Registration Sub-Committee

5 January 2024

Review of a Premises Licence JK's Bar, Wellington Road, Whitby, YO21 1DY

Report of the Corporate Director – Environment

1.0 PURPOSE OF REPORT

- 1.1 To seek the determination by the Statutory Licensing and Registration Sub-Committee of an application for the review of a Premises Licence (Licensing Act 2003).

2.0 SUMMARY

- 2.1 An application for the review of a premises licence under Section 51 of the Licensing Act 2003 was received from North Yorkshire Police (NYP) on 13 November 2023. The application and appendices are attached at **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 14 November 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 14 November 2023 and the end of consultation midnight 11 December 2023.

3.0 BACKGROUND

- 3.1 The licensing regime has a clear focus on promoting the four statutory licensing objectives which underpin the Licensing Act 2003, these are as follows:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

Licensed premises are required to actively promote the licensing objectives and comply with any conditions on their licence.

- 3.2 The review application refers to matters concerning the following licensing objectives:

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

- 3.3 Members should note that the premises have been subject to a previous review application submitted by NYP in April 2023. At the subsequent hearing NYP highlighted serious concerns regarding the undermining of the same three licensing objectives.

3.4 Within the April 2023 review application, the applicant stated the following:

“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”.

4.0 GROUNDS FOR REVIEW

4.1 The grounds for the current review are as follows:

“In April 2023 North Yorkshire Police requested a review of the Premises Licence for JK’s Bar, Wellington Road, Whitby. This was due to multiple breaches of the licence conditions, the crime and disorder and anti-social behaviour associated with the premises.

On the 23rd May 2023 the licensing sub-committee held the review hearing and determined that the premises licence would remain with an additional condition in that a personal licence holder would be in the public areas of the premises when the retail sale of alcohol takes place, and that Bulent Osman be removed as the Designated Premises Supervisor.

Despite the review hearing, removal of Mr Osman as DPS and additional conditions, the premises continue to breach the conditions attached to the premises licence and show a complete disregard not only to the responsible authorities but to the residents, visitors and local businesses because of crime, disorder and anti-social behaviour attributed to the bar.

JK’s Bar continues to seriously undermine the licensing objectives, specifically;

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

North Yorkshire Police see no alternative than to seek a revocation of the Premises Licence”.

4.2 Members will note that the matters raised by NYP are expanded upon within **Appendix A** which includes an application form and a number of additional supporting documents, including a reference to CCTV footage.

5.0 REPRESENTATIONS AND RESPONSES

5.1 Four representations have been received, these are attached at **Appendix C** and are summarised as follows:

5.2 Two representations in support of the review have been received from a local business and a management company who represent some of the residents living in a block of flats located close to JK’s Bar. They raise a number of complaints about JK’s Bar including anti-social

behaviour, excessive noise (daytime & night-time), booming music sounds, drunken/vulgar behaviour, urination/defecation and glass/can litter. They also highlight complaints in relation to the outside seating area and that the premises gives a poor impression of the town.

- 5.3 Two representations in support of the premises have also been received, they state that the premises is well run and an important community hub. They also state the concerns raised regarding the premises are exaggerated and without foundation.

6.0 ALTERNATIVE OPTIONS CONSIDERED

- 6.1 All of the Sub-Committee's options are outlined under the "Recommendations" heading towards the end of this report. No alternative options are available.

7.0 FINANCIAL IMPLICATIONS

- 7.1 No financial implications have been identified.

8.0 LEGAL IMPLICATIONS

- 8.1 The premises licence holder, the applicant and all parties to the review hearing may appeal against the decision of the Licensing Sub-Committee. Appeals must be made to a Magistrates' Court within 21 days of receiving notification of the decision.

9.0 EQUALITIES IMPLICATIONS

- 9.1 No equalities implications have been identified.

10.0 CLIMATE CHANGE IMPLICATIONS

- 10.1 No climate change implications have been identified.

11.0 POLICY IMPLICATIONS

- 11.1 The following sections of the Scarborough Locality Statement of Licensing Policy are relevant in considering the licensing objectives:

"3.8 The Council has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises".

"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".

11.2 The Sub-Committee should consider part 11 of the s182 Licensing Act 2003 guidance which runs from page 95 to 99. Particular attention should be directed to paragraphs 11.16 onwards which provide information on the range of powers that a Licensing Authority may exercise where it considers them appropriate for the promotion of the licensing objectives. As some of the allegations relate to music from the premises the Sub-Committee should consider para 16.36 – 16.41 and paras 16.55 and 16.56 of the guidance.

12.0 REASONS FOR RECOMMENDATIONS

12.1 In accordance with section 52 of the Licensing Act 2003, the licensing authority must hold a hearing to consider the review application and any relevant representations.

12.2 The Sub-Committee must, having had regard to the application and any relevant representations, take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.

13.0 RECOMMENDATIONS

13.1 In the case of a review of a premises licence, the Sub-Committee may choose to employ one or more of the following options:

- a) to modify the conditions 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

13.2 In relation to paragraph a) and b) above, the 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.

13.3 In relation to paragraph c) above, Members may decide, in accordance with s177A 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 and recorded music (between the hours of 8AM-11PM) as activities to which the Premises Licence applies. Conditions which relate to live and recorded music can also be re-instated so that they would apply between the hours of 8AM-11PM

APPENDICES:

Appendix A – Review application

Appendix B – Current premises licence

Appendix C – Representations

BACKGROUND DOCUMENTS:

Scarborough Locality Statement of Licensing Policy
Section 182 Guidance (Home Office), Licensing Act 2003

Karl Battersby

Corporate Director – Environment
County Hall
Northallerton

12 December 2023

Report Author – Alan Fane, Licensing Enforcement Officer

Presenter of Report – Alan Fane, Licensing Enforcement Officer

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.