



AGENDA ITEM:

LICENSING SUB-COMMITTEE

Date: Tuesday 6 June 2017

Report of: Director Of Leisure And Wellbeing

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SUBJECT: APPLICATION FOR THE REVIEW OF A PREMISES LICENCE IN RESPECT OF JYNX, WITHAM ROAD, SKELMERSDALE, WN8 8HP

Borough wide interest

1.0 PURPOSE OF REPORT

1.1 To consider an application under the Licensing Act 2003 (the Act) for the Review of a Premises Licence in respect of Jynx, Witham Road, Skelmersdale, WN8 8HP.

2.0 RECOMMENDATIONS

2.1 The Sub-Committee's instructions are requested.

3.0 PREMISES INFORMATION

- 3.1 Address of Premises: Jynx
Witham Road
Skelmersdale
WN8 8HP
- 3.2 Premises Licence Holders: Sarju Patel
50 Chisacre Drive
Wigan
WN6 8ER
- Daniel Kenyon
221 Millrose Close
Skelmersdale
WN8 9QT
- 3.3 Designated Premises Supervisor: David Bryan Webster
15B Witham Road
Skelmersdale
WN8 8HW

4.0 BACKGROUND INFORMATION

- 4.1 On 20 August 2015 an application for a new Premises Licence was received from Mr Sarju Patel and Mr Daniel Kenyon in respect of Jynx, Witham Road, Skelmersdale, which is attached as Appendix 1 to this report. Representations against the grant of the licence at that time were submitted by the Council's Environmental Protection and Community Safety Team and several members of the public. The application was determined by the Licensing Sub Committee on 21 October 2015 and the Committee decision is attached as Appendix 2 to this report. A copy of the full premise licence is also attached to this report as Appendix 3.
- 4.2 A location plan of the premises and the surrounding area is attached as Appendix 4 to this report.

5.0 THE APPLICATION FOR REVIEW

- 5.1 In accordance with the Act, on the on the 11 April 2017 an application for the review of the Premises Licence was submitted in respect of Jynx, Witham Road, Skelmersdale from the Council's Environmental Protection and Community Safety Team.
- 5.2 A copy of the full application for review is attached as Appendix 5 to this report.
- 5.3 In summary, the grounds for the Review as stated in the application, are that the operation of the premises is unreasonably interfering with the personal comfort of neighbouring residential premises. The application states that, since its opening in November 2016, the operation of Jynx has led to numerous complaints from the public to the Environmental Protection and Community Safety Team. The complaints have related to both entertainment noise and from patrons; with the noise from patrons being the main cause of the complaints. A Noise Abatement notice was served under the Environmental Protection Act 1990 on the 6th February 2017 in respect of noise from patrons in and around the smoking area, which was not subject to appeal. There is also evidence that the Notice has been breached six times and a prosecution file has therefore been instigated.
- 5.4 The review application also states that there is also evidence that the following condition on the licence has been breached: 'customers will not be permitted to congregate outside the premises at any time other than for the purposes of smoking and this will be subject to regular checks by the management to ensure any persons smoking are not causing a disturbance to residents'.
- 5.5 In accordance with Section 51(3) of the Act, the relevant Notices detailing the aforementioned grounds for Review, were displayed on the premises and in the immediate vicinity thereof, giving interested parties and responsible authorities, the right to make representations regarding the application for Review. The notice was also published on the Council's website. The Premises Licence Holder and Designated Premises Supervisor have been forwarded copies of the application for Review.

6.0 RELEVANT REPRESENTATIONS – MEMBERS OF THE PUBLIC

- 6.1 Representations have been received from six members of the public against the Review application and are attached as Appendix 6 to this report. The representations state that they have no concerns with the operation of the premises and no problems with regards to any breach of the licensing objectives.
- 6.2 Representations have been received from five members of the public in support of the Review application and are attached as Appendix 7 to this report. The representations provide details of numerous problems of noise and disturbance both from the premises and patrons leaving the premises. The representations are made under the 'Prevention of Public Nuisance' and 'Crime and Disorder' licensing objectives.
- 6.3 A request has been made by three of the five members of public who submitted a representation supporting the Review application to remove their personal details from these proceedings. The reason for this request is because they have stated a fear of potential intimidation, which relates to an incident that occurred to a local neighbour. Confirmation has been received from Lancashire Constabulary that on 4 April 2017 at approximately 2am a local resident had a brick thrown through their window (Incident log: LC-20170404-0100). The Police were unable to identify the offender and therefore the case has now been closed.
- 6.4 For Members' information, the Statutory Guidance issued under Section 182 of the Act states:

"Disclosure of personal details of persons making representations

9.26 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.

9.27 In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.

9.28 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.

9.29 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

9.30 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action."

6.5 Accordingly, the relevant personal details have been redacted from their representations. For the benefit of Members, Officers have been provided with the names and addresses of these individuals and can confirm that the representations are from residents who reside within the local vicinity of the premises.

7.0 LICENSING POLICY AND LEGAL CONSIDERATIONS

7.1 The Local Authority must have regard to the provisions of the Licensing Act 2003. In addition Section 4 of the Licensing Act 2003 provides that a Licensing Authority must have regard to its Statement of Licensing Policy and to the guidance issued by the Secretary of State under Section 182 of the Act.

7.2 The Council's Licensing Policy provides that licence holders should be given sufficient warning of any concerns regarding problems, which have been identified at the premises, and the need to make improvements. Licensees are expected to respond to such warning and implement the necessary remedial action. The message is clear that any failure to respond to such warnings would more than likely lead to a request for review of the licence.

7.3 As Members will be aware, the four licensing objectives are as follows:

- The Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- The Protection of Children from Harm

7.4 The Act provides that before determining a review application, the Licensing Authority must hold a hearing to consider it and relevant representations.

7.5 The Licensing Authority in determining a review application, having had regard to the application and any representations, may take the following steps if it considers it necessary for the promotion of the licensing objective:

- (i) Modify the conditions of the licence
- (ii) Exclude a licensable activity from the scope of the licence
- (iii) Remove the Designates Premises Supervisor
- (iv) Suspend the licence for a period not exceeding three months
- (v) Revoke the licence

7.6 In deciding which of the powers to use it is expected that the Licensing Authority should, as far as possible, seek to establish the causes of the concerns that the representations identify. Any action the Committee may wish to take should generally be directed at these causes and should always be no more than an appropriate response in the cause of promoting the licensing objectives.

7.7 In particular, Members' attention is drawn to the following sections of the Policy, which must be read in conjunction with this report:

Section 4	Prevention of Crime & Disorder	pages 10/12
Section 4	Public Nuisance	pages 14/17
Section 12	Review of Licences	pages 37/39

8.0 HUMAN RIGHTS ACT IMPLICATIONS

- 8.1 The Human Rights Act 1988 makes it unlawful for a Local Authority to act in a way that is incompatible with the European Convention on Human Rights. The Council will have particular regard to the following convention rights;

Article 6

that in the determination of civil rights and obligations everyone is entitled to a fair public hearing within a reasonable time by an independent and impartial tribunal established by law;

Article 8

that everyone has the right to respect for his home and family life;

Article 1 of the First Protocol

that every person is entitled to the peaceful enjoyment of his/her possessions including for example, possession of a licence.

9.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 9.1 The recommendations contained in this report have limited sustainability and/or community strategy implications. However, the Council's Licensing Policy (required under the Licensing Act 2003), which underpins the Committee's decision, impacts upon many areas within the Community. The Licensing Objectives contained in the Policy fit closely with many aspects of the Community Strategy and has the following links with the Community Strategy: Community Safety (issues A, C and E); Economy and Employment (issue D); Health and Social Care (issue A).

10.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 10.1 No additional financial or other resources are required.

11.0 RISK ASSESSMENT

- 11.1 The Council has a legal duty to administer the Licensing Act 2003 and is under a legal duty to determine the matter contained in this report. A failure to determine this matter would result in potential legal challenge.

Background Documents

There are no background documents (as defined in Section 100 D (5) of the Local Government Act 1972) have been relied on to a material extent in the preparation of this report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

Premises Licence application: 20 August 2015	(Appendix 1)
Sub Committee Decision: 21 October 2015	(Appendix 2)
Premise Licence	(Appendix 3)
Location Plan	(Appendix 4)
Review application	(Appendix 5)
Public Representations against the Review	(Appendix 6)
Public Representations supporting the Review	(Appendix 7)