

Licensing Act Sub-Committee

Date of Meeting:	25 th February 2022
Report Title:	Application to review a Premises Licence at the Oddfellows Arms, 97 Welsh Row, Nantwich, CW5 5ET
Report of:	Jayne Traverse, Executive Director - Place
Report Reference No:	To be provided by Democratic Services
Ward(s) Affected:	Nantwich North and West

1. Purpose of Report

- 1.1. The report provides details of an application for a Review to the Premises Licence, under section 51 of the Licensing Act 2003 and outlines the evidence presented by the parties in relation to the Review.

2. Executive Summary

- 2.1 The Licensing Act Sub-Committee must determine the application for the Review of the Premises Licence in line with the requirements set down in the Licensing Act 2003 and associated Regulations, Guidance and Policy. The Application relates to:

Oddfellows Arms, 97 Welsh Row, Nantwich, CW5 5ET

3. Recommendations

- 3.1. The Licensing Act Sub-Committee is requested to determine the Application for a Review of the Premises Licence by local residents and determine what steps, if any, it considers are appropriate to promote the Licensing Objectives.

4. Reasons for Recommendations

- 4.1. The Licensing Act Sub-Committee has the power to determine this application in accordance with the provisions of the Licensing Act 2003 and the Council's Constitution.
- 4.2. Acting in the capacity of the Licensing Authority, Members must seek to promote the Licensing Objectives. And where Members consider that matters have engaged one or more of the Objectives, they may exercise their discretion. The Licensing Objectives are:
 - a) The prevention of crime and disorder
 - b) Public Safety
 - c) The prevention of public nuisance
 - d) The protection of children from harm
- 4.3. Members of the Licensing Sub-Committee are reminded that they may not exercise discretion in any case, merely because it considers it desirable to do so. Careful consideration should be given to the application and the evidence/information presented by the parties in relation to the Review.
- 4.4. Finally, Members are also reminded that in determining the application, consideration also needs to be given to:
 - a) The rules of natural justice
 - b) The provisions of the Human Rights Act 1998

5. Other Options Considered

- 5.1. No other options have been considered, the Licensing Authority must determine such applications in the manner prescribed in the legislation.

6. Background

6.1. Summary of the Application

- 6.2. The Application for the Review of the Premises Licence was received on the 10th January 2022 (appendix 1). The application was sent to the Responsible Authorities for comment and was advertised in the manner summarised in paragraph 7 of this report. The application incorrectly identifies Mr Oldfield as the premises licence holder. This is not a mandatory field within the form and it is clear from the address provided that the Review relates to these premises. The licence is held by Marton's PLC and Mr Oldfield is the designated premises supervisor.

- 6.3. The application within the agenda pack has been redacted to remove some personal information. Members of the Committee will be provided with this information separately.
- 6.4. The grounds for the review application are:
- The prevention of public nuisance
- 6.5. The full grounds for the Review are set out in the application together with the supporting information provided. This supporting information includes audio and video recordings made by the applicants, which will be shown at the Hearing.
- 6.6. Following the advertising of the application the Licensing Team received a number of relevant representations. These are set out at appendix 2 and Members will note that a significant number are in support of Mr Oldfield and his management of the premises. Additional information has also been provided by one of the applicants for Review during the consultation period (appendix 3)
- 6.7. Neutral comments provided for information have also been received from Cheshire Constabulary and the Council's Environmental Health Team and Cheshire Constabulary (appendix 4). These explain the activity or lack of issues those agencies have had in relation to the premises.
- 6.8. **History of the premises**
- 6.9. The Oddfellows Arms has been a licenced premises for a considerable length of time. The current premises licence (number 321) licence granted in 2005 following the transition of alcohol licensing matters from the Magistrates' Court to the Local Authority, at that time Crewe and Nantwich Borough Council. The current licence is attached at appendix 5.
- 6.10. Since September 2017 the premises licence has been held by Marston's PLC. The current designated premises supervisor, Mr Jordan Oldfield, has been in place since June 2018.
- 6.11. There is no record in the licensing database of any complaints being received prior to September 2018.
- 6.12. A previous application for the Review of the Licence was made by the same parties on the 17th February 2020 however the continuation of that application was frustrated by COVID restrictions. The applicants have therefore made a new application.
- 6.13. **Information of Complaints made to the Licensing Team**
- 6.14. The Licensing Team has received a number of complaints from local residents since September 2018. These complaints all relate to noise nuisance of one type or another. These complaints were dealt with jointly with our colleagues in the Environmental Health Team and are set out within their representation. We have therefore not made a separate representation

setting these out to avoid duplication. Where matters relate solely to noise nuisance and not to a breach of the premises licence, the complaints are led by Environmental Health. The Licensing Team will support our colleagues and will signpost complainants to the licensing review process.

6.15. In September 2018 the Licensing Team received a noise nuisance complaint from a local resident who is party to this Hearing. This complaint was not referenced in the Environmental Health representation. The matter was dealt with by a letter of advice being sent to the then Business Development Manager at Marston's.

6.16. During the investigation into the complaints the Environmental Health Team have not found that the nuisance meets the threshold to be considered a Statutory Nuisance. However, when considering this application Members will need to be mindful that Public Nuisance and Statutory Nuisance, while can overlap, do not have the same meaning. And a Public Nuisance in licensing terms can be found where a Statutory Nuisance has not been found.

6.17. Decisions Available

6.18. In determining an application for the Review of a Licence the Licensing Authority can take a number of steps if it is considered appropriate for the promotion of the Licensing Objectives, in accordance with section 52 (4), those steps are:

- I. Modify the conditions of the licence. For this purpose, the conditions of the licence are modified if any of them are altered or omitted, or any new condition is added (see
- II. Exclude a licensable activity from the scope of the licence
- III. Remove the designated premises supervisor
- IV. Suspend the licence for a period not exceeding three months
- V. Revoke the licence

6.19. Members are reminded that should any conditions be added, they should be practical, enforceable and appropriate to promote the Licensing Objectives

6.20. In their application the parties are seeking changes to the licence rather than any other action that could be taken. The changes sought to the licence are:

1. No use of the garden or patio after 11:00pm
2. No amplified music, live or recorded in the garden
3. A reduction in the number of licensed outdoor performances from 8 to 6 each year

4. No live music inside the pub after 11:00pm and control of live music volume inside the premises

6.21. Members will be aware that the various changes to regulated entertainment have resulted in many types of entertainment not being licensable between 08:00 and 23:00 (providing certain criteria are met). A number of the actions sought by the applicants for the Review would come under those changes. Members should therefore note that on review of a premises licence or club premises certificate a licensing authority may (without prejudice to any other steps available to it under this Act) add a condition relating to music as if:

- a) the music were regulated entertainment, and
- b) the licence or certificate licensed the music

6.22. Members should also note that the plan of premises does not include any external area for licensable activities.

6.23. This would mean that any conditions applied to the licence following the review would have effect regardless of whether or not any of the legislation deregulating entertainment was engaged.

7. Consultation and Engagement

7.1. Following services of the application on the Licensing Authority, the application was distributed to all Responsible Authorities for consultation and comment.

7.2. In accordance with The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 the Council is required to advertise the application, including the placing of notices at or near the premises subject of the review for not less than 28 days.

7.3. The reason for the placing of notices is to make members of the public aware of the Review. The notices must also state the grounds for the review in accordance with Regulation 39. The grounds for the review were summarised on the notice with the information taken from the review application form. Notices were displayed in accordance with this requirement and were regularly checked during the 28 day period.

8. Implications

8.1. Legal

8.1.1. Subsection 52(2) of the Licensing Act 2003 prescribes that before determining an application for a review received in accordance with section

51, the Licensing Authority must hold a Hearing to consider the review application and any relevant representations.

- 8.1.2. Subsection 52(3) states that the authority must, having regard to the application and any relevant representations, take such of the steps as it considers, appropriate for the promotion of the Licensing Objectives.
- 8.1.3. There is also a statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1998 to exercise its various functions, doing all that it can to prevent Crime and disorder, and Anti-social Behaviour, behaviour adversely affecting the environment as well the misuse of drugs, alcohol and re-offending in the Local Environment.
- 8.1.4. By virtue of section 52(11) of the Licensing Act 2003, any decision of the Sub-Committee to take one or more of the steps set out above does not have effect:
 - a) Until the end of the period given for appealing against the decision or
 - b) If the decision is appealed against, until the appeal is disposed of

8.2. Finance

- 8.2.1. There are no Financial implications

8.3. Policy

- 8.3.1. The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003.
- 8.3.2. The Licensing Authority must also have regard to the guidance issued under section 182 of the Licensing Act 2003.
- 8.3.3. Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.

8.4. Equality

- 8.4.1. There are no direct Equality implications

8.5. Human Resources

- 8.5.1. There are no Human Resources implications

8.6. Risk Management

- 8.6.1. The Licensing Act Sub-Committee will hear representations made on behalf of both the applicant and those who have submitted relevant representations and will make a decision on the basis of the evidence and information presented. The Licensing Act 2003 makes provision for appeal to the Magistrates' Court of any decision made by the Licensing Authority

8.7. Rural Communities

8.7.1. There are no direct implications for Rural Communities

8.8. Children and Young People/Cared for Children

8.8.1. There are no direct implications for Children, Young People or Cared for Children.

8.9. Public Health

8.9.1. There are no direct implications for Public Health

8.10. Climate Change

8.10.1. There are no direct implications for Climate Change

Access to Information	
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Appendices:	<ol style="list-style-type: none">1. Review Application2. Relevant Representations3. Additional information from the applicant4. Representations from Responsible Authorities5. Premises Licence and Plan of Premises6. Location Map
Background Papers:	<ol style="list-style-type: none">1. Statutory Guidance Issues under section 182 of the Licensing Act 20032. Council's Statement of Licensing Policy 2019 - 2024