

CHESHIRE EAST COUNCIL

LICENSING ACT SUB-COMMITTEE

Date of Meeting:	2nd June 2016
Report of:	Miss K Evans, Licensing Team Leader
Subject/Title:	Application for the review of a Premises Licence The Mill Bar and Restaurant, Town Mill, High Street, Sandbach, CW11 1AH

1.0 Report Summary

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

2.0 Decision Requested

- 2.1 The Licensing Act Sub-Committee is requested to determine the Application for the Review of a Premises Licence by Sgt 3641 Lindsay Chamberlain of Police Eastern Partnerships in respect of:

The Mill Bar and Restaurant
Town Mill
High Street
Sandbach
CW11 1AH

- 2.2 The Licensing Act Sub-Committee is requested to consider the review application and any relevant representations and determine what steps, if any, it considers are appropriate to promote the Licensing Objectives.

- 2.3 Acting in the capacity of Licensing Authority, Members must seek to promote the Licensing Objectives, and where Members consider 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

- 2.4 The Sub-Committee in respect of this application must have regard to the Guidance issued under Section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy.

- 2.5 Finally, Members are also reminded that in determining the application in accordance with the Licensing Act 2003, Members must also have regard to:

- The rules of natural justice
- The provisions of the Human Rights Act 1998

2.6 Members should also consider the following:

- The Local Authority's statutory responsibility under the Health and Social Care Act 2012 for the health of the population of Cheshire East
- Local Authority's statutory duty under the Crime and Disorder Act 1998 to have regard to the need to do all that it reasonably can to prevent crime and disorder, misuse of drugs and alcohol and reoffending in its area.

3.0 Reasons for Recommendations

3.1 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.

4.0 Wards Affected

4.1 Sandbach

5.0 Local Ward Members

5.1 Councillor Barry Moran

6.0 Policy Implications

6.1 The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003.

6.2 Whilst having regard to the Statement as a whole and the general principles contained within, Members may wish to consider the following:

6.2.1 This application for the review of a premises licence relates to the undermining of the prevention of crime and disorder and the protection of children from harm objectives. The Council's policy deals with these matters at paragraphs 7 and 10 respectively.

6.2.2 Anti-social behaviour, which overlaps with the crime and disorder objective and the Police's information, is also addressed within the Statement of Police at paragraph 6

6.2.3 The Policy also deals with the reviews of licences and enforcement matters at paragraph 17.

6.3 Members should provide reason(s) for any decision taken and should set out their reasoning where they determine to depart in any way from the Policy or Guidance.

7.0 Financial Implications

7.1 Not applicable.

8.0 Legal Implications

8.1 Sub-section 52(2) of the Licensing Act 2003 prescribes that before determining an application for review received in accordance with section 51, the Licensing Authority must hold a hearing to consider the review application and any relevant representations.

8.2 Sub-section 52(3) states that the authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the Licensing Objectives. The steps set out within sub-section (4) are:

- Modify the conditions of the licence
This could include either imposing further conditions on the licence or changing (for example, further restricting) the hours of certain licensable activities, where this is proportionate and relevant to the licensing objectives. This may also include a requirement that unregulated entertainment becomes regulated again between the hours of 8am and 11pm. For this purpose, the conditions of the licence are modified if any of them are altered or omitted, or any new condition is added.
- Exclude a licensable activity from the scope of the licence
- The Sub-Committee may decide that it is proportionate and relevant to the Licensing Objectives to remove one or more of the licensable activities.
- Remove the designated premises supervisor
- Suspend the licence for a period not exceeding three months
- Revoke the licence

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

8.3 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

9.0 Risk Management

9.1 Section 181 and Schedule 5 of the Licensing Act 2003 make provision for appeal to the Magistrates' Court of any decision made by the Licensing Authority.

10.0 Background

- 10.1 On the 7th April 2016 an application for a review of the Premises Licence was submitted by Sgt 3641 Lindsay Chamberlain of the Police Eastern Partnerships, Crewe Police Station. The grounds for review set out within the review application were; (1) the Prevention of Crime and Disorder, (2) the Protection of Children from Harm. A copy of the review application is appended to this report as Appendix 1 together with the support evidence provided by the Police.
- 10.2 The Premises Licence Holder and Designated Premises Supervisor named on the Premises Licence is Mr Jonathan Jones. A copy of the Premises Licence is appended to this report as Appendix 2. Mr Jones has submitted a statement in relation to the application for review to the Police who in turn provided this information to the Licensing Authority on 22nd April 2016 (appendix 3).
- 10.3 Within the prescribed consultation period in relation to the review, the Licensing Authority has received representations from the Council's Public Health Team acting as a Responsible Authority under the Act. Representations have also been received from one other person.
- 10.4 In reviewing the Premises Licence and making its decision, the Licensing Act Sub-Committee must have regard to the application and relevant representations. The Sub-Committee may take such of the steps referred to within sub-section 52(4) of the Licensing Act 2003 (if any) as it considers appropriate for the promotion of the Licensing Objectives.

10.5 Relevant Representations

Responsible Authorities:

- 10.5.1 The representation from the Environmental Health Officer is attached as Appendix 4 of this report.

There were no representations from any of the other Responsible Authorities.

Other Persons:

- 10.5.2 The Council has received a representation in support of the premises (appendix 5).

10.6 Procedural Matters

- 10.6.1 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.
- 10.6.2 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.

10.6.3 Notices were displayed in accordance with this requirement. However, on a number of occasions the notices were either tampered with or removed entirely. This necessitated officers repeatedly redisplaying them. A report describing this process is at appendix 6 together with a copy of the notice and a letter sent to the premises licence holder on the 19th April 2016. Photographs from the Council's CCTV department will also be available to Members at the Hearing.

10.6.4 In his statement provided to the Police Mr Jones explains that he was advised to remove the notices by his solicitor because they are a '*...misrepresentation of true and actual fact (therefore this is giving the public false/unsubstantiated information and trying to falsely guide their judgement)*'. However, the notices represent the grounds put forward by the Police for the review and the Hearing is Mr Jones' opportunity to clarify or refute any misleading or untrue statements.

10.6.5 The requirement to advertise the notices at the premises for no less than 28 consecutive days at the premises has not been fully complied with.

10.6.6 However, the case of R (on the application of Akin) v Stratford Magistrates Court [2014] EWHC 4633 (Admin) has recently dealt with the validity of notices and confirms that substantial compliance with the relevant regulations (38 and 39 taken as a whole) is sufficient for the process to be deemed valid. This follows and reiterates previous case law concerning procedural defects. The information provided by Officers in relation to the notices supports that substantial compliance, insofar as Mr Jones' actions allowed, has been achieved.

10.6.7 In addition to the notices at the premises, notices were also displayed at the Council's Westfields Offices and on the Council's website. Notices were displayed on blue A4 paper with size 16 font and followed the requirements in regulation 39 on its content.

10.7 Cheshire Police has also provided copies of letters sent to the premises licence holder on the 6th and 14th April 2016. These letters are attached at appendix 7.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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APPENDICES

- Appendix 1 – Review application and accompanying documentation (Police appendices A – H)
- Appendix 2 - Existing Premises Licence and conditions
- Appendix 3 - Statement and information from the Premises Licence Holder
- Appendix 4 - Representation from Public Health
- Appendix 5 - Representations received in support of the premises
- Appendix 6 - Information in relation to the displaying of the public notices
- Appendix 7 - Letters sent by the Police to the Premises Licence Holder
- Appendix 8 - Plan of area