

Licensing Act Sub-Committee

Date of Meeting:	6 th December 2022
Report Title:	Application to review a Premises Licence – Swish Lounge, Crewe
Report of:	Jayne Traverse, Executive Director – Place
Report Reference No:	To be provided by Democratic Services
Ward(s) Affected:	Crewe South

1. Purpose of Report

- 1.1. To allow Members of the Sub-Committee to determine an application to review a Premises Licence made under the Licensing Act 2003 for the following premises:

Swish Lounge, 31 Mill Street, Crewe, CW2 7AJ

2. Executive Summary

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

3. Recommendations

- 3.1. The Licensing Act Sub-Committee is requested to consider the application and any relevant representations and determine what steps, if any, it considers are appropriate to promote the Licensing Objectives.
- 3.2. 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:
- The prevention of crime and disorder

- Public Safety
 - The prevention of public nuisance
 - The protection of children from harm
- 3.3.** 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 presented by the parties in relation to the application.
- 3.4.** 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

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.

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.** On the 12th October 2022 the Licensing Authority received an application to review the premises licence from the Council's Commercial Services Team, acting as a Responsible Authority in accordance with section 13 (4) (c) and (e) of the Licensing Act 2003. The application was sent out for consultation in the manner set out in paragraph 7.
- 6.2.** The grounds for the review application are repeated breaches of section 8 of the Health Act 2006 (failing to prevent smoking on a smoke free premises), undermining the Licensing Objectives.
- 6.3.** The Review Application is set out, with the supporting information provided, at appendix 1 of the report.
- 6.4.** The Council's Environmental Protection Team have provided comments, which are set out at appendix 2.
- 6.5.** The Council's Licensing Team has made a relevant representation, which is set out at appendix 3.
- 6.6.** No responses were received from any other Responsible Authority.

- 6.7.** No relevant representations were received from any other parties (such as local residents). Though a local resident did contact us to state that they felt the conditions of the licence had not been supervised sufficiently.
- 6.8.** The current premises licence (number: PREM1406), which confirms the licensable activities, the hours for licensable activities, and any conditions attached to the licence is attached to the report at appendix 4. The decision notice following the Hearing for the grant of the licence is attached at appendix 5.
- 6.9.** In order to assist Members, we have included a map of the local area (appendix 6) so that the premises can be seen in context. This is for information purposes and does not form the area for licensable activities.
- 6.10. Information of Complaints made to the Licensing Team**
- 6.11.** The Licensing Team received some complaints regarding the premises. Information on these matters is sent out within the relevant representation made by the team.
- 6.12. History of the premises licence**
- 6.13.** A licence was first applied for on 19th November 2021. However, it took some time for the applicants to submit a valid application. At this time the applicant Mr Anik, was using an agent to assist him with the application process. Despite this assistance the applications were incorrectly completed and had to be resubmitted. Advice was provided by email on why the application was not valid. The application was deemed to be valid on 30th November 2021 and followed the usual process for determination. During the consultation process relevant representations were received and a Hearing of the Licensing Act 2003 Sub-Committee was convened to determine the matter.
- 6.14.** In the period between the premises opening and the licence being granted, a number of Temporary Event Notices were used to provide licensable activities.
- 6.15.** The first Hearing was adjourned because the agent dealing with the application and the applicant Mr Anik did not comply with the Notice of Hearing issued. There appears to have been a lack of communication between the two parties. With the agent not making Mr Anik aware that the Hearing had been organised. A second Hearing was arranged for the 22nd February 2022. Following this Hearing a licence was granted.
- 6.16. Explanation of Smoke Free Legislation**

- 6.17.** Smoking has been prohibited by law in enclosed and substantially enclosed workplaces and public places throughout the United Kingdom since July 2007. These laws came into effect following a number of Government White Papers, which looked at the harms caused by second-hand smoke in workplaces and public spaces.
- 6.18.** The persons in control of premises (the owners, occupiers or managers) are required to ensure compliance with the legislation by ensuring that no one smokes in an enclosed or substantially enclosed space. They must also display at least one legible no-smoking sign in smokefree at the premises.
- 6.19.** Under the Health Act 2006, 'substantially enclosed' is a premises or structure with a ceiling or roof (including temporary and retractable coverings such as awnings) and where there are permanent openings, other than windows or doors, which in total are less than half of the area of the walls.
- 6.20.** This means that premises such as the Swish Lounge are not compliant with smokefree legislation when their retractable roof and doors are closed.

7. Consultation and Engagement

- 7.1.** Once an application is received, this triggers a period of not less than 28 days when the application must be advertised. This is to allow Responsible Authorities and other persons to provide any relevant representations.
- 7.2.** In accordance with the legislation, review applications must be advertised in a number of ways.
- 7.3.** The application must be sent to all the Responsible Authorities, as set out in the legislation. The application was emailed to these parties on the 12th October 2022.
- 7.4.** The application must be given to the premises licence holder. A copy of the application and supporting information was also hand delivered to the premises on the 12th October 2022.
- 7.5.** Notices on blue paper were put up at various locations around the premises by a Licensing Enforcement Officer on the 12th October 2022.
- 7.6.** Notice of the Review was also placed on the Council's website.
- 7.7.** On the 18th October 2022, 21st October 2022, and 7th November 2022 Licensing Officers visited the premises and confirmed that the notices were still in place.

8. Implications

8.1. Legal

- 8.1.1. The Sub Committee must determine this application in accordance with section 51 of the Licensing Act 2003. To do so otherwise would render its determination unlawful and invalid.
- 8.1.2. In accordance with the provisions of section 52 (3) of the Licensing Act 2003 the Licensing Authority Sub Committee must, having regard to the representations, made in this application take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.
- 8.1.3. Section 52 (4) provides that the authority may:
- a) modify the conditions of the licence
 - b) exclude a licensable activity from the scope of the licence
 - c) remove the designated premises supervisor
 - d) suspend the licence for a period not exceeding three months
 - e) revoke the licence
- and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added
- 8.1.4. Members are reminded that should any conditions be added, they should be practical, enforceable and appropriate to promote the Licensing Objectives.
- 8.1.5. Members are also reminded of the statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1998, through all of its various functions - and Licensing is one of those functions - to do all that it can to prevent crime and disorder, anti-social behaviour, behaviour adversely affecting the environment and reoffending.
- 8.1.6. Members must give reasons for their determination and notice of it must be communicated to the parties to this hearing. If Members depart from the Statutory Guidance or the Council's Statement of Licensing Policy, then their decision notice must set out the reasons for doing so.

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 due regard to the guidance issued under section 182 of the Licensing Act 2003.

8.3.3. Both the Council's Statement of Licensing Policy and the 182 Guidance have sections dedicated to the Prevent of Public Nuisance objective and the Review process. While careful attention should be given to those sections, it is important to fully take into consideration both documents.

8.3.4. 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 equality implications

8.5. Human Resources

8.5.1. There are no human resources implications

8.6. Risk Management

8.6.1. The Licensing Sub-Committee will hear representations made on behalf of both the applicant, the premises licence holder, and 'relevant persons' who have submitted their representation. The Sub-Committee will make a decision on the basis of the evidence presented to it. 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 implications for rural communities

8.8. Children and Young People/Cared for Children

8.8.1. There are no implications for children and young people

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 implications for climate change

Access to Information	
Contact Officer:	Jennifer Rowney, Senior Licensing Officer Licensing@Cheshireeast.gov.uk 0300 123 5015
Appendices:	Appendix 1 - Review application and supporting information (Appendices A - I are further pieces of information submitted in support of the application) Appendix 2 - Relevant Representations from the Environmental Protection Team Appendix 3 - Relevant Representations from the Licensing Team Appendix 4 - Extant Premises Licence PREM1406

	Appendix 5 – Decision Notice Appendix 6 - Location Map
Background Papers:	<u>Statutory Guidance issued under section 182 of the Licensing Act 2003</u> <u>Council's Statement of Licensing Policy published under section 5 of the Licensing Act 2003</u> <u>Licensing Act 2003</u> <u>The Licensing Act 2003 (Hearings) Regulations 2005</u> <u>Licensing Act Sub-Committee 22nd February 2022</u>