

NOT FOR PUBLICATION

Exempt under Regulation 14 of the Licensing Act 2003 Hearings Regulations 2005 (SI 2005 No. 44)

Appendix D

Report of the Head of Licensing and Registration

Report to the Licensing Sub Committee

Date: Friday 2nd December 2011

Subject: Application for the Review of a Premises Licence following the Issue of a Closure Order for The Fellmonger, North Parkway, Seacroft, Leeds, LS14 6QS

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	Killingbeck & Seacroft	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Executive Summary

1. This report informs Members of a closure order made in respect of The Fellmonger, North Parkway, Seacroft, Leeds, LS14 6QS, under Section 161 of the Licensing Act 2003. The Licensing Authority is now under a duty to review the premises licence held in respect of these premises.
2. Responsible authorities have been served with copies of the application and Ward Members have been notified of the application.

1.0 Purpose of this Report

- 1.1 This report provides Members with the background and history to the making of the review. The report sets out the relevant law when reviewing licenses under the Licensing Act 2003 ("the Act"). Finally, this report informs members of the options available to them when reviewing a premises licence.

2.0 Background Information

2.1 On the 3rd August 2005, an application to convert the existing Justices' On Licence in to a Premises Licence was received by the Licensing Authority.

The application was successful without representation and was subsequently granted as requested for the following licensable activities and hours:-

Sale by Retail of Alcohol

Monday to Saturday

11:00 – 23:00

Sunday

12:00 – 22:30

Performance of Recorded Music

Monday to Sunday

00:00 – 23:59

2.2 As of February 2006 several applications were made to transfer the Premises Licence which resulted in Inn Trade Associates Ltd holding the Premises Licence whilst Mr Glenn Andrew Binger remained the Designated Premises Supervisor(DPS) throughout.

2.3 In March 2007 the Licensing Department received a letter from representatives of the above licence holder surrendering the premises licence, which was acquired shortly afterwards by Mr Binger on transfer within the statutory 7 day period.

2.3 In June 2007 West Yorkshire4 brought a review of the Premises Licence following a serious incident in February 2007

The review sought to vary the licence to include measures necessary in order to promote the licensing objectives. The Licensing Sub Committee resolved to amend the licence by imposing the measures suggested by West Yorkshire Police. These can be identified in the Premises Licence attached at Appendix A, under the heading 'Prevention of Crime and Disorder', numbered 46 to 53.

2.4 An application to Transfer the Premises Licence was received by this department on 25th September 2007 specifying Classic Bar Holdings Ltd as the licence holder. Shortly afterwards Mr Binger was replaced as DPS by Heidi Thistlewood on 19th October 2007.

2.5 During the term of the licence complaints were received by the Licensing Authority in respect of unauthorised Licensable Activities taking place and the premises operating beyond permitted hours. Warning letters reminding the licence holder/ DPS of their responsibilities were sent to the premises and details of such are contained within the police submission at Appendix D.

2.6 On the 18th September 2008 an application to vary the premises licence was submitted. The application proposed to extend the provision of regulated entertainment to include Live Music, Films and Facilities for Making Music from Thursday to Sunday until 00:00 hours.

The application attracted representations from Environmental Health and Health & Safety. Both agencies offered measures to address the promotion of the licensing objectives which were accepted by the applicant, and the licence therefore granted as requested, subject to the agreements reached.

2.7 Over the next few years the licence received several applications to transfer the premises licence holder and vary the DPS. At this present time, the licence holder is W Licensing Limited and the DPS specified is Mr Alan Herbert.

2.8 The premises currently have the benefit of a Premises Licence issued under the Licensing Act 2003 for the following licensable activities to take place during the stated hours:

Sale by retail of alcohol	
Monday to Saturday	11:00 - 23:00
Sunday	12:00 - 22:30

Exhibition of a film	
Thursday to Saturday	11:00 - 00:00
Sunday	12:00 - 00:00

Performance of recorded music	
Every Day	00:00 - 23:59

Provision of facilities for making music	
Thursday to Saturday	11:00 - 00:00
Sunday	12:00 - 00:00

2.9 The premises licence allows the premises to be open to the public during the following times:

Monday to Thursday	11:00 - 23:30
Friday & Saturday	11:00 - 00:30
Sunday	12:00 - 00:30

2.10 The Premises Licence Holder is W Licensing Limited.

2.11 The Designated Premises Supervisor for the premises is Alan Herbert

2.12 A copy of the current Premises Licence is attached at **Appendix A** for the benefit of members.

2.13 A map detailing the location of the premises is attached at **Appendix B**.

3.0 Main Issues

3.1 On the 17th November 2011 the police exercised their powers under Section 161 (1) of the Licensing Act 2003 to close the premises for a period not exceeding 24 hours.

The police made an application the following day under Section 164 of the Licensing Act 2003 to Magistrates' Courts to consider the order and any extension of it.

The Magistrates felt that there was no evidence that further disorder would take place and public safety is at risk. The closure order was therefore revoked.

- 3.2 Member's attention is drawn to the Magistrates' decision attached at **Appendix C** of this report.
- 3.3 As part of the review procedure, details and a summary of the grounds for review must be displayed at the premises for a 7 day period commencing the first working day after the Magistrates' Decision was received, this being Monday 21st November 2011.
- 3.4 Notices providing the above details were duly placed on prominent display at the premises on Monday 21st November 2011, which are then checked on a regular basis. The notices will be removed at the end of the 7 day consultation period.
- 3.5 Section 167 of the Act places the Licensing Authority under a duty to review the premises Licence in respect of the Fellmonger. The Licensing Authority must then follow the procedure in accordance with Section 51 of the Licensing Act 2003.

4.0 Relevant Representations

- 4.1 Under the Act representations can be received from responsible authorities or interested parties. Representations must be relevant and, in the case of an interested party, must not be frivolous or vexatious.
- 4.2 Representations have been received from the following Responsible Authorities:
- **West Yorkshire Police**
Member's attention is drawn to **Appendix D** of this report.
- 4.3 Members should note that at the time of writing this report, the representation period is ongoing and further representations may still be received. If so, all details will be circulated to Members on receipt and copies of any additional information will be supplied at the hearing.

5.0 Matters Relevant to the Application

- 5.1 Members of the Licensing Sub Committee must make decisions with a view to promoting the licensing objectives which are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm

5.2 In making their decision Members are obliged to have regard to guidance issued under Section 182 of the Act, a copy of the relevant section is attached at **Appendix E**, and the council's licensing policy (paragraphs 5.99 to 5.117). Members must also have regard to the relevant representations made and evidence they hear.

6.0 Corporate Considerations

6.1 Equality and Diversity / Cohesion and Integration

6.1.2 The council has adopted a Statement of Licensing Policy which sets out the principles the council will use to exercise its functions under the Licensing Act 2003 and in which care has been taken in matters of equality, diversity and human rights. This policy is reviewed every three years. The council has completed equality, diversity, cohesion and integration screening and impact assessments with regards to the consultation process undertaken during the review of the policy.

6.2 Council Policies and City Priorities

6.2.1 When determining an application the licensing sub committee must have regard for the Licensing Act 2003 Statement of Licensing Policy which sets out the principles the council will use to exercise its functions under the Licensing Act 2003. Applicants are expected to read the policy before making their application and the council will refer to the policy when making its decisions.

When considering a review, the authority will take into account all relevant circumstances but will view the matters listed in paragraph 12.13 of the policy with particular seriousness.

6.2.2 The licensing regime contributes to the following aims:

By 2030, Leeds will be fair, open and welcoming

- Local people have the power to make decisions that affect them
- There is a culture of responsibility, respect for each other and the environment
- Our services meet the diverse needs of our changing population
- Everyone is proud to live and work

By 2030, Leeds' economy will be prosperous and sustainable

- Opportunities to work with secure, flexible employment and good wages

By 2030, all Leeds' communities will be successful

- Communities are safe and people feel safe

6.2.3 The licensing regime contributes to the following city priorities:

Best city... for communities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

6.3 Resources and Value for Money

6.3.1 The licensing process, including the licensing sub committee, generates a cost to the council. The majority of these costs are covered by the application fee. The fees are set by Statute, and there is little option to increase the fee to cover all the cost. However, the Police Reform and Social Responsibility Bill, due to receive Royal assent in November 2011, may allow local authorities to set their own fees in the future based on full cost recovery.

6.4 Legal Implications, Access to Information and Call In

6.4.1 The Licence Holder and people making representations are able to challenge the licensing sub-committee's decision by appealing to the Magistrates Court. Legal advice is provided during the sub committee hearing and during deliberations to mitigate the risk to the council.

6.5 Risk Management

6.5.1 Full training and legal advice is provided to members sitting on Licensing Sub Committee in order to mitigate the risk of legal challenge.

7.0 **Conclusions**

7.1 Members are requested to determine this review. The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- To modify the conditions of the licence (which includes adding new conditions or any alteration or omission of an existing condition)
- Exclude any licensable activities to which the application relates.
- To remove the Designated Premises Supervisor.
- To suspend the licence for a period not exceeding 3 months
- To revoke the licence

7.2 Members may alternatively decide that no action is necessary and that the circumstance of the review does not require the Committee to take any steps to promote the licensing objectives.

7.3 Members should note the Guidance also suggests it is open to Members to issue an informal warning to the licence holder or to recommend improvement within a particular time. However the Guidance further provides that where responsible authorities have already issued such warnings, the issuing of another warning should not be repeated.

7.4 Members of the Licensing Committee are asked to note that they may not take any of the steps outlined above merely because they consider it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

8.0 **Recommendations**

The committee must:

- Consider the application and any relevant representations; and
- Take any of the steps detailed at 7.1, if any, they consider necessary for the promotion of the licensing objectives.

9.0 Background Papers

- Guidance issued under s182 Licensing Act 2003
- Leeds City Council Licensing Policy