

PREMISES/PERSONAL LICENSING SUB-COMMITTEE

17 NOVEMBER 2023

REPORT OF ASSISTANT DIRECTOR (GOVERNANCE & LEGAL)

A. REVIEW OF A PREMISES LICENCE

ENTERPRISE HARWICH BAR LTD, WICKS'S BAR, 1 MIDLAND HOUSE, HIGH STREET, HARWICH, ESSEX

REF: 23/00594/PREREV

PURPOSE OF THE REPORT

To provide information in order that the Sub-Committee can determine the application for a review of the premises licence.

SUMMARY

Under Section 51 of the Licensing Act 2003 Tendring District Council Environmental Protection Team, being a Responsible Authority, has applied for a Review of the Premises Licence currently held by Enterprise Harwich Bar LTD in respect of the premises known as Wicks's Bar, 1 Midland House, High Street, Harwich, Essex (Licence No. 23/00291/PREMTR). In the section of this report headed "Supporting Information" is a summary of the review application. The full review application is set out at Appendix A to this report.

Enterprise Harwich Bar LTD have been the Premises Licence holders since the licence was transferred to them in May 2023, and Alexander Wicks has been the Designated Premises Supervisor (DPS) of the premises since this date. Details of current licence which is subject to the review are set out below and attached at Appendix B to this report.

DETAILS OF CURRENT LICENCE WHICH IS SUBJECT TO REVIEW

Premises

Enterprise Harwich Bar LTD (Wicks's Bar)

Licence No

23/00291/PREMTR

Premises Licence Holder

Enterprise Harwich Bar LTD

Designated Premises Supervisor

Alexander Wicks

Current Opening Hours

Monday	12:00 - 00:00
Tuesday	12:00 - 00:00
Wednesday	12:00 - 00:00
Thursday	12:00 - 00:00
Friday	12:00 - 01:30
Saturday	12:00 - 01:30
Sunday	12:00 - 00:00

Current Licensable Activities

The current licensable activities permitted by the Premises Licence are:-

Sale of Alcohol on and off the premises

Monday to Thursday 12:00 - 00:00

Fridays and Saturdays 12:00 - 01:30

Sunday 12:00 - 00:00

Late Night Refreshment

Monday to Thursday 23:00 - 00:00

Fridays and Saturdays 23:00 - 01:30

Sunday 23:00 - 00:00

SUPPORTING INFORMATION

An application for the Review of the Premises Licence for Enterprise Harwich Bar LTD, known as Wicks's Bar has been submitted by the Responsible Authority - Tendring District Council Environmental Protection Team. This was received by the Licensing Authority on 4 October 2023 on the grounds that the licensing objective in respect of the Prevention of Public Nuisance has been breached.

The operation of the premises has caused significant disturbance since the licence was transferred and the premises opening in May 2023.

The Environmental Protection team have witnessed noise nuisance from loud music and bass emanating from the premises on five separate occasions.

Tendring's Environmental Protection team served a noise abatement notice on the premises under the Environmental Protection Act 1990 on 20th July 2023.

Breaches of the noise abatement notice have been witnessed on 8th September 2023, 9th September 2023 and 30th September 2023.

It is therefore the view of the Environmental Protection team that the premises continues to operate in such a manner that is inconsistent with the requirements of the objectives set out in the Licensing Act 2003 relating to the prevention of public nuisance.

The designated premises supervisor Mr Wicks has been given ample opportunity and time since first being made aware of the complaints but has failed to make any improvements in relation to the loud music and bass emanating from the premises.

A copy of the Premises Licence Review application is attached to this report in full as a bundle and is attached as Appendix A.

Copies of the following documents have been supplied to the Premises Licence holder:

- Review application from Environmental Protection Team.

Copies of all documentation concerning this Application for Review are available from the Licensing Team upon request.

CONSULTATIONS

Licence holder

A letter from the premise licence holder/DPS, Mr Alexander Wicks, has been received outlining the proposed steps and a noise management plan in order to address the problems raised by the Responsible Authorities. – Appendix D

Other Responsible Authorities

Two representations supporting the review application have been received from Essex Police and Tendring District Council Licensing Authority as a Responsible Authority, with the following comments:

Essex Police

Police have undertaken a total of thirteen visits to this premises since May 2023.

These visits have been a mixture of uniformed officers and the district licensing officer (DLO) for the area. Visits were conducted to assess compliance with the licence conditions, action plan and in response to specific incidents/reports made to police.

Tendring District Council – Licensing Authority as a Responsible Authority

On behalf of the Licensing Authority as a Responsible Authority, I am submitting further support of the above application submitted by Tendring District Council (Environmental Protection) on the 4th October 2023. The grounds of this support is that the Licensing Objectives in respect of: the Prevention of Public Nuisance and Crime and Disorder have not been satisfied.

Licence Holder in company name “Enterprise Harwich Bar Ltd” and Designated Premises Supervisor (DPS) namely Mr Wicks, has held the current Premises Licence since 03rd May 2023.

As a Licensing Enforcement Officer, I have received 35 complaints from 13 different complainants in close proximity to the premises (8 persons submitted 1 complaint, and the remaining 5 submitted between 2 and 9 complaints) starting from 15th May 2023. I categorise the subject of the complaints below-

- Loud Music*
- Carrying on Licensable activities without an appropriate licence in place in relation to Loud Music past 2300hrs.*
- Antisocial Behaviour issues including fighting, shouting, and drugs misuse.*

Full details of the representations from Essex Police and Tendring District Council – Licensing Authority as a Responsible Authority are attached as Appendix E.

In view of the fact that the Licensing Authority in this case is both the administering authority, including for this hearing, and a responsible authority that has submitted representations there has been a division of responsibility among relevant staff such that the Head of Democratic Services and Elections has undertaken such duties and functions of the Licensing Authority as the administrative body for the review and the Licensing Manager has undertaken such duties and functions of the Licensing Authority as Responsible Authority for the purposes of representations and attendance at the hearing. Likewise, other Members of staff in the licensing team have solely undertaken activities in the roles of either the administrative body or the Responsible Authority role. No member of staff has undertaken both roles.

Other Persons

Other persons can also make representations regarding review applications. Other persons in terms of the Licensing Act 2003 can include any individual, body or business and in accordance with paragraph 8.13 of the Section 182 Guidance issued by the Secretary of State (August 2023 version) which accompanies the Licensing Act 2003, are entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their

geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence.

Such representations should be relevant and not be considered by the Licensing Authority as vexatious, repetitious, or frivolous and can be made in opposition to, or support of, an application and can be made by any individual, body or business that has grounds to do so. The S182 Guidance is silent on whether representations can be made against an application for a review, or in support of the respondent to the review (which in this case is the Premises Licence holders Enterprise Harwich Bar LTD). However, given that the Guidance is silent on this question, but clearly indicates that other persons can make representations in regards to a review and that representations can be made in support of applications, it is therefore reasonable to assume that representations can also be made in support of the Premises Licence Holders Enterprise Harwich Bar LTD in this matter for due consideration by the Licensing Sub Committee and as part of the Review application hearing process.

The Licensing Authority have received six representations supporting the review application, 4 from residents and two from Councillors for the Harwich area. One representation has been received from the landlord of the premises in support of the Premises Licence Holders. These are attached as Appendix F

FINANCE, OTHER RESOURCES AND RISK

There are no resource implications to the Authority arising directly from the contents of this report.

The risks in relation to this matter are that the Sub-Committee does not consider all relevant matters or does not ignore all irrelevant matters in determining the application in this report. The details submitted and procedures for oral hearings seek to mitigate this risk. The Members of the Sub-Committee have all undergone mandatory training in licensing matters to further mitigate this risk.

The parties to this matter have a right of appeal against the Authority's determination of this matter. The appeal is to the Magistrates' Court within 21 days of the determination being notified to them.

COUNCIL'S ADOPTED GUIDELINES AND LEGISLATION

When carrying out its functions the licensing authority must have regard to the four licensing objectives. The objectives are:

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

Notice of Display and Advertisement

Notice of the review application has been made and advertised in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompany it. A notice detailing the review application was clearly displayed on the premises concerned and on the Tendring District Council Website for the prescribed 28-day period. Periodic checks were undertaken by the Licensing Authority to ensure that this was the case. The end of the notice period was 1 November 2023.

Validity of Application for Review

The Licensing Authority has accepted the review application and is satisfied that it has been properly served in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompany it. The Head of Democratic Services and Elections is satisfied that the application and the representations that it makes are relevant to the licensing objectives.

Licensing Act 2003 Section 182 Guidance with regard to Review Hearings (Version August 2023)

Sections 11.1 to 11.28 of the Guidance [issued by the Secretary of State under Section 182 of the Licensing Act 2003] assists all parties in respect to advice on review applications and hearings, including those arising in connection with crime and the relevant extracts of this guidance are attached to this report as Appendix G. The full Guidance is available online and paper copies will be available for reference at the hearing.

Tendring District Council's Statement of Licensing Policy

In accordance with Section 5 of the Licensing Act 2003, the Authority has adopted a Statement of Licensing Policy. The relevant sections/extracts of the Council's Statement of Licensing Policy in respect to Review applications are as follows:

Reviews

- 1.46 Where possible and appropriate the Licensing Authority and all other Responsible Authorities will give early warning to licence holders of any concerns about problems identified at premises which may undermine, or are undermining, one or more of the licensing objectives and to initiate a dialogue that can lead to a resolution of these problems to the satisfaction of all parties. The review process represents a valuable protection mechanism for residents and the wider community to be able address problems with a specific premises where for instance there is alcohol related crime and disorder or public nuisance and where for example dialogue between the licence holder, responsible authorities or other parties concerned such as residents to prevent or mitigate such problems has not worked.
- 1.47 Responsible authorities, other persons (which could include a resident, business or Ward Councillor for example) can make an application to trigger a review of a premises licence but evidence of the problems being experienced would be required to be presented to the Licensing Authority and an applicant or applicants for a review would ordinarily be expected to be able to substantiate their complaints at a Licensing Sub Committee hearing. Representations must be relevant to one or more of the four licensing objectives and will not be accepted if they are determined by the Licensing Authority to be frivolous, vexatious or repetitious.
- 1.48 No more than one review application from interested parties for a particular premises other than a Responsible Authority will normally be permitted within any 12-month period on similar grounds except in exceptional and compelling circumstances.

The full Statement of Licensing Policy is available online and paper copies will be available for reference at the hearing.

Appeals

An appeal against the decision of the Licensing Authority can be made by the following:

- (a) the Applicants
- (b) the holders of the Premises Licence
- (c) any person who made relevant representations in relation to the application

The appeal must be made to the Magistrates' Court within a period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of its decision.

Options Under Section 52 Licensing Act 2003

Following consideration by this Sub-Committee at this hearing of this review application submitted by Tendring District Council Environmental Protection Team, Section 52 of the Licensing Act 2003 states that the Licensing 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 necessary for the promotion of the Licensing Objectives. These steps are:-

- (i) to modify the conditions of the licence
- (ii) to exclude a licensable activity from the scope of the licence
- (iii) to remove the Designated Premises Supervisor
- (iv) to suspend the licence for a period not exceeding three months
- (v) to revoke the licence

For this purpose, the conditions of the licence are modified if any of them are altered or omitted, or any new conditions are added because of this Review Hearing.

In addition to the above measures, the Sub-Committee is advised that it is also open to it that it may (for example) decide to take no action in respect of the review application, or issue an informal/formal warning letter and/or recommend improvement to the premises and its management within a particular period of time if it concludes that on consideration of the facts and balance of probabilities, this is the reasonable, proportionate and appropriate approach to take in regards to the determination of this Review application. If a different outcome is the reasonable, proportionate, and appropriate approach to take then the options in Section 52 of the Licensing Act 2003 should be considered.

In exercising its discretion, the Authority will have regard to its obligations under Section 17 of the Crime and Disorder Act 1998 concerning the need to exercise its various functions with regard to the likely effect of the exercise of those functions on and the need to do all that it reasonably can to prevent crime and disorder in the area.

RECOMMENDATION(S)

No specific recommendation is made to the Licensing Sub Committee in respect to this Review application other than to consider the options within Section 52 of the Licensing Act 2003 (as shown above). The Licensing Sub Committee is asked to reasonably, proportionately and appropriately determine this application for a Review of a Premises Licence in respect of the premises and person named as the licence holder in its own right and on its own merits taking into account all relevant matters detailed in in the agenda, report and accompanying papers and any other relevant matters that may introduced at the hearing itself by any of the parties that have an interest in this Review hearing.

APPENDICES

- Appendix A - Premises Licence Review application
- Appendix B - Current Licence
- Appendix C - Location Plan
- Appendix D - Noise Management Plan submitted by Licence Holder
- Appendix E - Representations from Essex Police and Tendring District Council – Licensing Authority
- Appendix F - Representations from residents and Councillors
- Appendix G - Extract from the Secretary of State's Guidance under S182 of the Licensing Act 2003
- Appendix H - Hearing Procedures

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