

Application for a summary review of a premises licence – Pitcher and Piano, Tunbridge Wells

For Licensing Sub Committee on 20 December 2021

Summary

Lead Member: Councillor Bob Backhouse

Lead Director: Paul Taylor, Director of Change and Communities

Head of Service: Gary Stevenson, Head of Housing, Health and Environment

Report Author: Trevor Horner, Licensing Officer

Classification: Partially Exempt from Disclosure – Exempt Appendix A and B exempt by virtue of the following paragraphs of Schedule 12A of the Local Government Act 1972 (as amended): Paragraph 1 (Information relating to any individual); Paragraph 2 (Information which is likely to reveal the identity of an individual); and Paragraph 7 (Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime).

Wards Affected: Culverden

Approval Timetable	Date
Licensing Sub Committee	20 December 2021

Recommendations

Officer / Committee recommendations as supported by the Portfolio Holder:

1. That Members determine the application for summary review and take such steps as the Sub-Committee consider necessary for the promotion of the licensing objectives, giving appropriate weight to:
 - The merits of the review application.
 - The representations and supporting information presented by all parties.
 - The Guidance issued by the Home Office under Section 182 of the Licensing Act 2003.

- The Council's Statement of Licensing Policy.

1. Purpose of report and executive summary

- 1.1 This report sets out details of an application for a summary review of a premises licence, made under the provisions of Section 53 of the Licensing Act 2003.
- 1.2 In accordance with the provisions of Section 53(B) of the Licensing Act 2003 the licensing authority must hold a hearing to consider whether it is necessary to take interim steps any interim steps that may be necessary and to give the holder of the premises licence the opportunity to make representations.

2. Introduction and background

- 2.1 Pitcher and Piano is situated at 3-5 Church Road, Tunbridge Wells, and has the benefit of a premises licence granted under the provisions of the Licensing Act 2003. Attached at **Appendix A**.
- 2.2 On 22 November 2021 the Council received an application for summary review of the premises licence from the chief officer of police made in accordance with the provisions of Section 53A Licensing Act 2003. The grounds for review given in the application are that in the opinion of a senior police officer the premises are associated with serious crime or serious disorder or both. Application attached as **Exempt Appendix A**
- 2.3 A copy of the "Certificate to accompany the application for the review of a premises licence under section 53A of the Licensing Act 2003" is attached at **Exempt Appendix B**.
- 2.4 On receipt of such an application the licensing authority, must arrange a hearing to determine the application for a full review of the premises licence within 28 days commencing the day following the day on which the application was received.
- 2.5 In accordance with the requirements of section 53A of the Act and regulation 39, Licensing Act (Premises licences and club premises certificates) Regulations 2005, a public notice was displayed by the licensing authority at or near the premises. A copy was also displayed at the Town Hall, and a copy placed on the Council's website for a period of no less than seven consecutive days commencing 23 November 2021.
- 2.6 During the 10 working days public consultation period, responsible authorities or other persons may make representations in connection with the application for review under any of the four licensing objectives namely:-
 - Prevention of crime and disorder
 - Prevention of a public nuisance
 - Public safety
 - Protection of children from harm

- 2.7 Before determining the application for a full review of the premises licence, the Licensing Authority must hold a hearing to consider the application and any representations received. Providing that the representations are relevant to the promotion of the licensing objectives and in the case of those made by other persons are not frivolous or vexatious.
- 2.8 Notwithstanding the requirements outlined above, in accordance with the requirements of Section 53B of the Licensing Act 2003, a meeting of the Licensing Sub-Committee was held on 23 November 2021, to consider whether it was necessary to take interim steps pending the full review of the licence.
- 2.9 The Licensing Sub-Committee decided to take the interim step of adding to the premises licence the conditions offered by the legal representative for the licence holder and agreed by Kent Police, as set out in **Appendix B**.

3. Available options

3.1 The steps a licensing authority may take are:

- Modify the conditions attached to the premises licence.
- Exclude a licensable activity from the premises licence.
- Remove the designated premises Supervisor.
- To suspend the premises licence for a period not exceeding three months.
- To revoke the premises licence.

3.2 Members are advised that the interim steps taken on 23 November 2021 cease to have effect on determination of the application for summary review (subject to the right of appeal provided by section 53C (11) of the Licensing Act 2003), except where those steps, or any part of them, form part of the decision made by the Sub-Committee at the hearing.

4. Preferred Option and Reason

4.1 That Members determine the application, and take such steps as the Sub-Committee consider necessary for the promotion of the licensing objectives, giving appropriate weight to:

- The representations and supporting information presented by all parties;
- The Guidance issued by the Home Office under Section 182 of the Licensing Act 2003;
- The Council's Statement of Licensing Policy

5. Consultation on Options

5.1 Other than the statutory consultation described in Part 2 of the report above, no other consultation is required by the Licensing Act 2003.

6. Implementation

6.1 The Chairman will announce the Sub-Committee's decision prior to the conclusion of the hearing.

6.2 The applicant, any person who made relevant representations and the chief officer of police will subsequently receive written confirmation of the decision.

6.3 A copy of the Decision Notice will be placed on the Council's website.

6.4 In accordance with the provisions of Section 181 and Schedule 5, Licensing Act 2003 the applicant and any person who made a relevant representation has a right to appeal the decision made by the Licensing Authority. The appeal must be made to the Magistrates' Court within a period of twenty-one days from the date on which the appellant receives notification of the decision from the licensing authority.

7. Appendices and Background Documents

Appendices:

- Appendix A: Premises licence
- Appendix B: Interim Steps

Exempt Appendices:

- Exempt Appendix A: Summary Review Application form
- Exempt Appendix B: Certificate accompanying the summary review application.

Background Papers:

- Revised Guidance issued under Section 182 of the Licensing Act 2003
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- TWBC Statement of Licensing Policy
https://tunbridgewells.gov.uk/_data/assets/pdf_file/0006/394593/Ratified-Statement-of-Licensing-Policy-V1-2021-2026.pdf
- LGA Licensing Act 2003 – Councillors handbook (England and Wales)
<https://www.local.gov.uk/publications/licensing-act-2003-councillors-handbook-england-and-wales>

8. Cross Cutting Issues

A. Legal (including the Human Rights Act)

Licensing Act 2003

The Licensing Act 2003 at section 4(1) requires the Licensing Authority to carry out its functions with a view to promoting the Licensing Objectives which Section 4(2) sets out as:-

- a) The prevention of crime and disorder
- b) Public safety
- c) The prevention of public nuisance
- d) The protection of children from harm

The Sub-committee is permitted under Section 18 (3) of the Licensing Act 2003, having had regard to relevant representations, to take such steps, as it considers necessary, for the promotion of the licensing objectives.

Section 18(3) of the Licensing Act 2003 states 'where relevant representations are made, the authority must:-

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
- (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

Section 4(3) of the Licensing Act also requires the Licensing Authority to have regard to the published statement of the Licensing Policy and any guidance issued by the Secretary of State under section 182

Each application that comes before the Sub-Committee must be treated on its own merits, and the Sub-Committee must take its decision based upon:

- a) The merits of the application
- b) The promotion of the four licensing objectives
- c) The policy of the Licensing Authority
- d) The Guidance issued under Section 182 of the Licensing Act 2003
- e) All valid representations made

Whilst the applicant, responsible authorities or persons making representations all have a right of appeal to the Magistrates Court dependant on the decision of the Sub Committee, the decision made takes immediate effect.

Human Rights Act

Article 1 of the First Protocol is concerned with the protection of property and provides that every person is entitled to peaceful enjoyment of his possessions. The term 'possessions' is given a broad definition and includes a licence.

Article 8 is concerned with the right to respect for private and family life. It states that Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The Council has had the proper regard for Article 8.

Article 6 relates to the right to a fair hearing. The applicant has seen this report prior to this hearing and is aware of the reason why the Sub-Committee is considering this application. [Report author to insert comment on legal issues including what is the legal authority for this decision or report, what if any are the legal implications? Seek legal advice when completing.

The relevant legal officer must sign off the report before it is submitted to Democratic Services.]

Robin Harris, Contentious Team leader, 06.12.2021

B. Finance and Other Resources

No implications

Trevor Horner, report author, 06.12.2021

C. Staffing

No implications

Trevor Horner, report author, 06.12.2021

D. Risk Management

No implications

Trevor Horner, report author, 06.12.2021

E. Environment and Sustainability

No implications

Trevor Horner, report author, 06.12.2021

F. Community Safety

Premises' licence reviews provide for appropriate formal oversight when licensing conditions may have been breached.

Section 17, Crime and Disorder Act 1998

17(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due 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 its area.

Terry Hughes, Community Safety manager, 06.12.2021

G. Equalities

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users

No implications

Trevor Horner, report author, 06.12.2021

H. Data Protection

Article 5, General Data Protection Regulation 2016

1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject;

(b) collected for specific, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;

(d) accurate and, where necessary, kept up to date;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

No implications.

Trevor Horner, report author, 06.12.2021

I. Health and Safety

No implications

Trevor Horner, report author, 06.12.2021

J. Health and Wellbeing

No implications - Trevor Horner, report author, 06.12.2021