

# LICENSING ACT SUB COMMITTEE

## LICENSING ACT 2003 PREMISE LICENCE REVIEW – THE BOARDWALK, 100 MARINE ROAD, MORECAMBE, LA4 4DR

### DETERMINATION OF APPLICATION FOR THE REVIEW OF THE PREMISE LICENCE

4<sup>th</sup> October 2022

#### Report of Licensing Enforcement Officer

##### PURPOSE OF REPORT

To enable members to determine an application for a review of a Premise Licence under Section 51 of the Licensing Act 2003 submitted by Mrs Rachel Stainton, Senior Environmental Health Officer, Lancaster City Council Public Protection Service. The application relates to The Boardwalk, 100 Marine Road, Morecambe, LA4 4DR.

The report is public

##### RECOMMENDATIONS

The Sub-Committee is requested to consider the application from Lancaster City Council Environmental Protection Service for the review of the premise licence, representations made by other responsible authorities, other persons and any submissions made by the premises licence holder.

In accordance with Section 52 (3) and (4) of the Licensing Act 2003, the Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (a) to modify the conditions of the licence,
- (b) to exclude a licensable activity from the scope of the licence,
- (c) to remove the designated premises supervisor
- (d) to suspend the licence for a period not exceeding three months,
- (e) to revoke the licence

The matter for decision, therefore, is which, if any, of these steps should be taken.

## 1.0 Introduction

1.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

1.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives .

1.3 Mrs Rachel Stainton, Senior Environmental Health Officer, Lancaster City Council Public Protection Service has submitted an application for review of a premises licence under Section 51 of the Licensing Act 2003. The application relates to The Boardwalk, 100 Marine Road, Morecambe, LA4 4DR. A copy of the application is at Appendix No1. The grounds for submitting the review are based on one of the four licensing objectives, namely;

- The prevention of public nuisance

1.4 A copy of the premises licence for The Boardwalk is attached at Appendix No.2. This licence was granted to the premises on 24<sup>th</sup> November 2005 and details the following licensable activities: -

- Regulated Entertainment (live & recorded music and performance of dance) Indoors

Monday – Wednesday	10:00 hours to 23:00 hours
Thursday – Sunday	10:00 hours to 01:00 hours

- Late Night Refreshment (Indoors)

Thursday – Sunday	23:00 hours to 01:00 hours
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- Sale and Supply of Alcohol (On & Off the Premises)

Monday – Wednesday	10:00 hours to 23:00 hours
Thursday – Sunday	10:00 hours to 01:00 hours

1.5 Since October 2010 this premise licence was held in favour of Bay Property Lettings Company Limited. The licence holder applied to vary the said premise licence on 10<sup>th</sup> June 2019 to specify Mr Charles Edwards as the individual responsible for the day to day running of the premises known in licensing terms as the Designated Premises Supervisor (DPS). Following advice from the Licensing Authority, the premise licence was varied once again on 7<sup>th</sup> September 2020 to specify Mr Lee Michael Wallett as the incoming Designated Premises Supervisor. An application to transfer the premises licence under Section 42 of the Licensing Act 2003 was subsequently received on 17<sup>th</sup> June 2021 whereupon Bay Property Lettings Company Limited consented to Mr Wallett becoming the incumbent licence holder.

- 1.6 In accordance with the relevant Regulations, the parties have been given Notice of the Hearing. A copy of the Notice of Hearing is attached for Members attention at Appendix No.3.

## **2.0 Legal background to Review Application**

- 2.1 Under Section 51 (1) of the Licensing Act 2003, a responsible authority or other person may apply to the licensing authority for the review of a licence.

The grounds for review must relate to one or more of the licensing objectives and as Members will be aware, these are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm

- 2.2 An application for review must be copied to the premises licence holder and to the responsible authorities. Once such an application is received, the licensing authority must place a notice at the premises, and there is then a period of 28 days during which representations may be made to the licensing authority.
- 2.3 A copy of the notice which was displayed at the premises during the 28-day period is attached at Appendix No.4. Licensing Enforcement Officers made occasional checks throughout the 28-day period to satisfy that the notice was still in place.
- 2.4 Members are reminded that representations can either be in support of or against an application for review of a premises licence. The representation must relate to the likely impact of the grant of the licence in relation to one or more of the four licensing objectives.
- 2.5 During the statutory 28-day consultation period further representations were received from Chief Officer of Lancashire Constabulary, Lancashire Fire & Rescue Service and Lancaster City Council Licensing Authority all in support of the applicant. No representations were received in support of the licence holder.

## **3.0 Background information provided by Licensing Authority**

- 3.1 Lancaster City Council's Environmental Protection service are satisfied that nearby residents of The Boardwalk have been impacted by unreasonable noise coming from the premises over the last three years thereby seriously undermining the prevention of public nuisance licensing objective.

During this time there have been investigations into complaints involving numerous assessments, monitoring visits, installation of noise recording equipment and extensive noise app recordings supplied by the complainants and supporting information. Satisfied that noise nuisance existed an Abatement Notice was served on 26<sup>th</sup> August 2021 under the Environmental Protection Act 1990 upon the company running the business. These are detailed at Appendix No.5 to this report.

Despite this Notice being in place further complaints continued to be received from nearby residents concerning what they perceived as unreasonable noise levels. Both verbal and written warnings were given to the Directors of the company advising of the potential of non-compliance to the Abatement Notice, yet further disturbances persisted and continued to be reported to the Public Protection Service.

- 3.2 A visit to the premises on 17<sup>th</sup> March 2022 undertaken by Council Officers from the Environmental Health and Licensing Service who witnessed unreasonable levels of noise from within the adjacent neighbouring properties and the venue itself. Moreover, the Officer had to shout to the business proprietor to make herself heard as the music was described as “extremely loud” at the time. The Directors of the company were subsequently advised that what had been witnessed by Officers on 17<sup>th</sup> March 2022 constituted a potential breach of the current Abatement Notice and that should improvements to the noise levels at the premises not be recognised then a review of their premise licence would be considered.

Notwithstanding this, further complaints from neighbouring residents ensued and relevant noise apps were provided. The Council's Senior Environmental Health Officer undertook a visit to the flats adjacent to the Boardwalk on 30<sup>th</sup> July 2022 and witnessed noise levels she considered were wholly unreasonable.

Despite various warnings given to the Directors of The Boardwalk and an on-going Noise Abatement Notice in place, the Council's Environmental Protection Service are satisfied that there has been a repeated and persistent disregard about causing unreasonable noise disturbance to nearby residents. In view of this, they believe there is little alternative other than to apply for this review of the premise licence as all other options have been exhausted and residents living nearby continue to be impacted by noise nuisance from the adjoining business.

- 3.3 The application for review of the premise licence issued under Section 51 of the Licensing Act 2003 in respect of The Boardwalk, 100 Marine Road, Morecambe, is supported by PC Andrew Taylor of Lancashire Constabulary on behalf of Chief Officer of Police.

During the period in question Police have provided evidence of 70 logs received concerning serious assaults and public order at the venue including some relating to noise issues concerning patrons drinking outside the premises, details of which are attached as Appendix No.6 to this report.

PC Taylor has suggested various additional conditions be added to the premise licence for Boardwalk in order to better uphold the crime prevention and public safety licensing objectives.

- 3.4 Lancashire Fire and Rescue Service as a Responsible Authority responded to the application for review of the premises licence for Boardwalk advising a Fire Officer visited the premises on 25<sup>th</sup> August 2022 and deduced some patrons may be at risk of fire given certain circumstances and therefore having an adverse effect upon the Public Safety licensing objective.

In order to ensure the business complies with a duty of care to their customers a schedule of recommendations was given to the proprietor all of which must be completed within a month of the visit. Of particular note is Item No.3 regarding “Mute Music” in which it is determined the current fire detection and alarm system may not be suitable because people within the premises may have difficulty hearing the fire alarm in the event of an emergency when loud music is playing thereby delaying their escape from fire. The recommendation is that all music must be muted when the fire alarm sounds and this is detailed in Appendix No.7 for Members' attention.

- 3.5 Further support into this review of the premise licence for Boardwalk comes from Lancaster City Council's Licensing service acting in their role as Responsible Authority. Miss Sarah Jones, Enforcement Officer within the Licensing Authority, bases her representation upon the public nuisance licensing objective that she believes has neither been promoted or upheld at the premises.

Non-compliance was identified at the premises during COVID-19 inspections in July 2020 which related to the volume of music causing noise nuisance and deemed to be unsafe at the time. Further issues relating to the outdoor balcony being in use after 23:00 hours and a lack of CCTV footage being available upon request from an authorised officer were cited as a breach of licence conditions. Furthermore, following a visit to the premises in August 2021 it was identified by Officers that speakers were not connected to the noise limiting device thereby exacerbating noise nuisance issues to nearby residents and a further breach of licence condition.

Monitoring visits to the premises and neighbourhood were undertaken by Licensing and Environmental Health Officers in March 2022 when the Abatement Notice should have been observed yet once again it was identified that music was fully audible within the flats next door to The Boardwalk. This was brought to the attention of the licence holder who conceded at the time that the speakers in use at the premises were not connected to the noise limiting device and identified by the Licensing Officer as a recurrence of breach of licence condition. As recently as 22<sup>nd</sup> August 2022 when a visit to The Boardwalk was undertaken by the Council's Senior Environmental Health Officer for Public Protection and Licensing Enforcement Officer to offer guidance in mitigating further complaints in consideration of this review application, the licence holder conceded that during recent karaoke events on both floors of the premises that not all of the speakers utilised by musicians had built-in noise limiters. Details of the Licensing Officer's representation are contained within Appendix No.8 to this report.

#### 4.0 **Government Guidance under Section 182 of the Licensing Act 2003 in relation to a representation involving Public Nuisance**

The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a

certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the 10 | Revised Guidance issued under section 182 of the Licensing Act 2003 early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues

Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

- 4.1 General guidance from Government relating to review of a premise licence under Section 182 of the Licensing Act 2003 are detailed at Appendix No.9 to this report.
- 4.2 The relevant parts of the Council's Statement of Licensing Policy are set out at Appendix No.10
- 4.3 **Natural Justice and Human Rights**

Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications.

In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

## 5.0 **Conclusion**

The management of The Boardwalk have displayed scant regard to the public nuisance licensing objective and have subjected residents of neighbouring domestic dwellings to repeated, persistent and continuous unreasonable noise disturbance.

Members should consider the application for review of the premises licence and any steps it considers necessary for the promotion of the licensing objectives.

<b>CONCLUSION OF IMPACT ASSESSMENT</b> <b>(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</b>	
None.	
<b>FINANCIAL IMPLICATIONS</b>	
Financial Services have not been consulted as there are no financial implications.	
<b>LEGAL IMPLICATIONS</b>	
Legal implications are contained within the report, In accordance with Section 181 and Schedule 5 of the Licensing Act 2003, the parties have a right of appeal to the magistrates court within 21 days	
<b>BACKGROUND PAPERS</b>	<b>Contact Officer:</b> David Eglin <b>Telephone:</b> 01524 582387 <b>E-mail:</b> deglin@lancaster.gov.uk <b>Ref:</b> DWE
None	