

**Report for:** Licensing Sub Committee 15<sup>th</sup> January 2019

**Item number:**

**Title:** Review of a Premises Licence under the Licensing Act 2003.

**Report**

**authorised by :** Daliah Barrett-Licensing Team Leader – Regulatory Services.

**Ward(s) affected** Harringay

**Report for Key/**

**Non Key Decision: Not applicable**

**1. Describe the issue under consideration**

- 1.1 An application for the review of the Premises Licence for Jolly Anglers, 33 Station Road Wood Green, London N22 -held by 580 Green Lanes Ltd was received by the Licensing Authority on 24<sup>th</sup> November 2018. A copy of the application form is attached to this report at **Appendix 1 and** supporting documentation.
- 1.2 The applicants of the review are the Metropolitan Police and have cited their reason for the review due to the operation of the premises has failed to uphold the licensing conditions and licensing objective of:
  - The prevention of crime and disorder
  - Public Safety
- 1.3 The Metropolitan Police have submitted crime reports and emails showing communication with the premises licence holder 580 Green Lanes Ltd, that in their opinion demonstrate their limited /no actual involvement in the operation of the premises.
- 1.4 Letters of representation have been received from 22 residents living in the vicinity of the venue that speak of their perspective on the impact the venue has had on their day to day lives. These are at **Appendix 2.**
- 1.5 There is also a representation from the Licensing Authority supporting the Police call for revocation of the licence due to the poor management of the venue and the impact from nuisance on those nearby. **Appendix 3.**
- 1.6 TLT solicitors are acting on behalf of Ms Nancy Maxwell who is the current named designated Premises supervisor on the license and therefore authorises the sale of alcohol on the premises. She is also the named leaseholder. There is a witness statement included at **Appendix 4** in which Ms Maxwell clarifies her involvement and role in the business. The LSC is reminded however that the overall premises Licence holder is 580 Green Lanes Ltd.

## 2 Licensing history of the premises

- 2.1 The Jolly Anglers has been licensed for many years and used 'Grandfathered rights' to come across into the Licensing Act 2003 in November 2005. The premises was owned by Greene King at the time and Mr Ertan (aka Steve) Salih was the named DPS and the tenant to Greene King. The tenant was protected by the Landlord and Tenant Act 1953. This is relevant as Greene King informed the Licensing Authority that Mr Salih had protected rights.  
Our records show a handful of noise complaints from residents in 2006 and this lead to an abatement notice being issued to Mr Salih and Ms Maxwell. Noise nuisance complaints continued at the venue. Greene King put in place a lobby system to the rear of the premises in order to try and manage this problem.
- 2.2 A variation application was made in 2007 by Greene King for later hours of operation. Greene King made clear he would make any relevant changes to mitigate and deal with the noise if applicable.
- 2.3 The development of the area meant that the pub was now in-between two residential blocks. Noise complaints continued as patrons from the public house would congregate in the smoking area to the rear the side and the front of the public house. There were extensive talks between the Councils Environmental Health Team and Greene King throughout 2007 to 2008.
- 2.4 In 2009 Mr Ertan Salih was found to have been selling alcohol to underage people on the premises. The Council issued a Formal Caution and Greene King also imposed a penalty on Mr E Salih. Greene King advised that Mr Salih would be replaced at the venue but due to his protected tenancy it would take some time for this to take effect and an amicable agreement would need to be reached.
- 2.5 In the meantime a number of DPS changes were made to the premises licence but Mr Salih remained onsite managing the pub as he was a protected tenant. Between 2009 and January 2013 a total of six DPS variations were made for the premises licence. The noise nuisance and anti-social behaviour problems continued and discussions were had with Greene King
- 2.6 Greene King in the meantime had managed to reach agreement with Mr E Salih for him to step aside and not have any direct management of the premises by July 2013. The management of the premises was taken over by his siblings Gulden and Huseyin Salih. Gulden Salih became the DPS in July 2013. Huseyin Salih then replaced her as the DPS in April 2014.
- 2.7 There were ongoing problems of anti-social behaviour and fights at the venue. Problems arose when CCTV footage was not forthcoming from the 'new tenants' The Police having concerns about the level of crime and ASB at the venue submitted a review in July 2014 following a number of fights emanating from the premises with little or no assistance from the management in providing CCTV when requested.
- 2.8 The LSC heard the matter and determined to impose further conditions on the
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licence whilst giving the new tenants an opportunity to make a success of managing the venue. A copy of the resolution is attached at **Appendix 5**. The pub continued to operate and complaints continued to be submitted by residents and also Metropolitan Housing who raised concerns with the ward councillors in 2015.

In early 2016 it was noticed that the premises was no longer operating.

2.9 Greene King sold the venue in early 2016. The Licensing Authority noticed the premises open and operating in mid-February 2016 and visited to ensure that it closed and no alcohol sales were to be carried out. An application to transfer the licence that was held by Greene King to Ms Nancy Maxwell was subsequently submitted to the Licensing Team. There were discrepancies on the transfer form and the DPS variation that led the Authority to contact Greene King to ask if they had given consent to the transfer of the licence. Greene King informed that they had given a signed consent form to 580 Green Lanes Ltd the new owners of the premises and provided their contact details also. The Licensing Service made contact with a Mr Berish Weiser who is a director for 580 Green Lanes Ltd. He was unaware of the premises being in operation. Guidance was provided on the need for the licence to be transferred and a DPS variation to be submitted prior to any licensable activity being able to commence onsite. A transfer application was submitted on 23<sup>rd</sup> Feb 2016 by 580 Green Lanes Ltd to make themselves the Premises Licence Holder and a DPS variation naming Nancy Maxwell.

2.10 The Police emailed Mr Weiser on 3rd June 2016 following an incident of robbery involving the venue. The email highlights the problems the Police faced when dealing with staff onsite at the venue and also Mr Ertan (Steve) Salih. The email is attached at **Appendix 6**. A request was submitted to Mr Weiser to meet and discuss the concerns relating to the management of the venue. Mr Weiser responded to Mr Greaves to say that he was unaware of who Ms Nancy Maxwell was as he had leased the venue to Steve Salih and considered him to be in charge. Mr Greaves explained to Mr Weiser that he would be the first person contacted as he represented the Premises Licence Holder – 580 Green Lanes Ltd, and not Ertan (Steve) Salih as he is not shown or referred to any of the licensing documentation. Mr Greaves pointed out to Mr Weiser that he needed to be in control of the venue due to a long history of serious crime and disorder at the venue under previous management.

2.11 The Licensing Authority and Police met with Mr Berish Weiser and Ms Maxwell to discuss the problems associated with the venue

### **3 Current Premises Licence – Appendix 7**

#### Supply of Alcohol

Sunday to Wednesday 1100 to 0100

Thursday to Saturday 1100 to 0300

Non Standard Timings Xmas Eve, Xmas Day, Boxing Day, New Years Eve, New Years Day, Spring and Aug Bank Holidays, good Friday, Easter Sunday & Monday, and any other Bank Holidays and Sunday preceding a Bank Holiday

1100 to 0300

Regulated Entertainment

Monday to Saturday 2000 to 0100

Sunday 1900 to 0100

Non Standard Timings Xmas Eve, Xmas Day, Boxing Day, New Years Eve, New Years Day, Spring and Aug Bank Holidays, good Friday, Easter Sunday & Monday, and any other Bank Holidays and Sunday preceding a bank Holiday  
1100 to 0100

New Years Eve from the start of permitted hours on 31 December until the start of permitted hours on 1 January

*The opening hours of the premises:*

Sunday to Wednesday 1100 to 0130

Thursday to Saturday 1100 to 0330

New Years Eve from the start of permitted hours on 31 December until the start of permitted hours on 1 January

#### **4 Licensing Administration comments on process and guidance**

4.1 Guidance issued under section 182 of the Licensing Act 2003 (para 11.2) states that 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.

4.2 In accordance with section 52(2) of the Act, the Licensing authority must hold a hearing to consider the application and any relevant representations.

#### **4.3 Legislation**

The following provisions of the Licensing Act 2003 and associated Regulations are of particular relevance to this application:

- Sections 51 and 52

These sections detail how a review application should be made and the process which should be followed in determining the application.

The Licensing Act 2003 (Hearings) Regulations 2005 (as amended) are also relevant and detail how hearings should be conducted to determine applications submitted under the Licensing Act.

#### **4.4 Policy considerations**

##### **Council's Statement of Licensing Policy**

The following paragraphs of the licensing authority's statement of licensing

policy are of particular relevance to this application:

4.5 Paragraph 90 - Consideration should not solely focus on the activities taking place within the area of the licensed premises. Appropriate measures to address issues outside the licensable area include:

- Putting in place plans that will assist to minimise disruption to the day-to-day lives of local residents, businesses and existing operations for the period of the event

4.6 Paragraph 149 Licence conditions

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. This authority will aim to ensure that conditions attached to licences will:

- Be appropriate for the promotion of the licensing objectives.
- Be precise and enforceable.
- Be unambiguous and clear in what they intend to achieve.
- Not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation.
- Be tailored to the individual type, location and characteristics of the premises and events concerned.
- Not be standardised.
- Not replicate offences set out in the 2003 Act or other legislation  
Be proportionate, justifiable and be capable of being met.
- Not seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff.
- Be written in a prescriptive manner.

Conditions attached to the various authorisations will be focused on matters which are within the control of individual licence holders and others with relevant authorisations, i.e. the premises and its vicinity. This will include the direct impacts of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

4.7 Paragraph 170 - Review Procedures

Reviews represent a key protection for the community where premises present problems associated with the licensing objectives, allowing other persons, local councillors or representatives and responsible authorities to apply in writing to the Licensing Authority for a review of a premises licence or club premises certificate.

4.8 Paragraph 172 - The Licensing Sub-Committee must, having regard to an application and any relevant representations, take such steps as it considers appropriate for the promotion of the licensing objectives.

4.9 The following information is intended to advise Members of the relevant aspects of the guidance issued by the Secretary of State, and good practice. Members should not depart from the Councils Policy and / or Section 182 Guidance unless they consider there is good reason to do so and must provide clear reasons for so doing.

5. **Section 182 Guidance – relevant sections.**

The most recent statutory

guidance was Issued in April 2018 and applies to this application.

The following provisions of the Secretary of State's guidance (2018) apply to this application:

- Chapter 11-this chapter gives guidance around the review process and determining an application for a review.

5.1 Paragraph (here and below) – section 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.

5.2 Paragraph 11.10 - Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

5.3 Paragraph 14.12 - Licensing is about regulating the provision of licensable activities on licensed Premises within the terms of the Licensing Act 2003. The terms and conditions attached to various permissions are focused on matters which are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places.

## **6 Licensing officer's observations**

- 6.1 It is the Licensing Authority's aim to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.  
In considering licence applications, where relevant representations are made, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for public nuisance and/or public disorder having regard to all the circumstances of the case.  
This authority will consider each application and work with the parties concerned to ensure that adequate noise control measures are in place. Any action taken to promote the licensing objectives will be appropriate and proportionate.
- 6.2 The Licensing Authority may not impose conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of the hearing that it is appropriate to impose conditions to promote one or more of the four licensing objectives.  
Therefore conditions may not be imposed for the purpose other than promoting

the licensing objectives and in some cases no additional conditions will be required.

- 6.3 In cases Members should make evaluative judgments. Where necessary to make findings of fact, the civil burden of proof applies, that is the balance of probability.
- 6.4 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff.
- 6.5 In summary, having conducted the hearing of this application, the Committee must decide which of the licensing objectives have been engaged (if any); seek to establish the cause or causes of any concerns which the representations identify; resolve any issues of fact (as necessary); decide whether the licensing objectives have been undermined and whether or not it is appropriate to exercise any powers under the review to promote those licensing objectives; take a proportionate approach to the exercise of any powers, addressing why lesser steps are not appropriate.

## 7 Options

- 7.1 The Committee must, having regard to the application and the representations, take such steps (if any), as it considers appropriate for the promotion of the licensing objectives. The options are:
- To modify the conditions of the licence
  - To exclude a licensable activity from the scope of the licence
  - To remove the designated premises supervisor
  - To suspend the licence for a period not exceeding three months
  - To revoke the licence
  - To take no action.
- 7.2 The Sub-Committee must ensure that all licensing decisions have:
- a direct relationship to the promotion of one or more of the 4 licensing objectives;
  - regard to the Council's statement of Licensing Policy;
  - regard to the Secretary of State's National Guidance.

Where the authority modifies the conditions or excludes a licensable activity from the scope of the licence it may determine that the modification or exclusion is to have effect permanently or for a period not exceeding 3 months.

- 7.3 The Licensing Authority's determination of this application does not have effect until the 21 days appeal period has expired or if the decision is appealed, the date the appeal is determined and or disposed of.
- 7.4 The Sub-Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the

authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.

7.5 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of private and family life. Article 1 of the First Protocol provides for the protection of property, which may include premises licences.

**Background papers: Licensing Act 2003**  
**Section 182 Guidance**  
**Haringey Statement of Licensing policy**  
**Report Pack**