

Report for: Licensing Sub Committee 25th August 2020

Title: Review of a Premises Licence under the Licensing Act 2003
Philip Lane Social Club, 209-211 Philip Lane, London N15

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

Ward(s) affected West Green

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 Philip Lane Social Club at the above address. The review application and supporting documents are located at Appendix 1. The licence is held by Mr A Toprak. Mr Toprak has held the licence since May 2014. A copy of the current premises licence is attached as Appendix 2.
- 1.2 Mr Toprak transferred the premises to become the Premises Licence holder and the Designated Premises Supervisor under the terms of the licence and therefore carries the responsibility to ensure that the licensing objectives are being upheld and promoted.
- 1.3 The Council records show that Mr Toprak had enforcement action taken against him for having illegal gaming machines onsite in June 2015. Also it is clear from the records held that Mr Toprak has not taken care in the conduct of his premises as the enforcement action ranges from illegal gaming machines to non-compliance with Health Act requirements to dumping waste.
- 1.4 The machines found were unauthorised and illegal gaming machines in contravention of the Licensing Act 2003 and the Gambling Act 2005. The machines did not comply with the regulations or technical standards set by the Gambling Commission.
- 1.5 The table below shows a number of enforcement visits and outcomes under Mr Topraks management. The latest being that the premises was found to be operating at a time when the country was placed into lockdown to mitigate the impact of the virus across the country. Mr Toprak continued to operate the premises by providing access to the public, who were able to enter to socialise and smoke within the premises as well as play on the illegal machines.
- 1.6 It was during the service of the review documentation that the Licensing Authority RA Officer realised that changes had been made to the rear of the premises to allow for an additional social club to be operated by another gentleman who Mr Toprak receives rent from. This area of the premises contained alcohol for sale and had been used for various dance events, which had been the subject of a number of noise complaints. The person renting the area has confirmed that he

pays rent to Mr Toprak and operates a social club that caters to the Afro-Caribbean community.

- 1.7 The Licensing Authority RA is seeking a review of the premises licence on the grounds that the repeated siting of illegal gaming machines at this premises and Mr Topraks' continued non-compliance undermines the prevention of crime and disorder licensing objective and that this is detrimental to the wider community. The Licensing Authority have lost confidence in the premises licence holder as they have ignored repeated advice and have continued to replace the seized machines with other illegal machines.
- 1.8 Residents that have submitted representation in support of the review have made clear that they have been adversely affected by noise nuisance from the premises over a number of months. Residents letters are found at Appendix 5.
- 1.9 The 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, a responsible authority, such as the Police or the Environmental Health Service, or any other person who can seek a review, may ask the Licensing Authority to review the premises licence because of a matter arising at the premises in connection with any of the four licensing objectives.
- 1.10 As such, in accordance with section 52(2) of the above-mentioned Act, the Licensing Authority must hold a hearing to consider the application and any relevant representations.

2 Licensing history of the premises

2.1 The complaints and enforcement action taken during Mr Topraks management:

Date	Issue/complaints received	action
12/6/2015	Gaming machine on premises	Simple Caution
20/9/2016	Smoking on premises	Written warning issued
09/12/2016	Smoking on premises	No contact
26/10/17	Gaming machine and illegal cigarettes	Enf Notice
14/11/17	illegal gambling, they do this at the front and rear of the property, they also have illegal fruit machines, and poker games with a profit of 10k, also drug use	Referred to ASB Officer
23/2/18	5 x Joker Poker Machines, 2 x Black Horse Machines, 1 x Betting Terminal	Prosecution – conviction (fine £600, comp £60 & fees £340)
22/5/18	Flytip	FPN - Paid
26/5/19	Loud music	No visit
8/8/19	Loud music between 10am to 3am	Caller wanted to log only
8/8/19	Caller would like to report loud music from 8pm till 4 or 5am	Caller wanted to log only
14/8/19	Loud music and bass. OOH email. No officers on duty - Log only.	Caller wanted to log only
15/8/19	Caller says that the music is playing loud music until 2am, their licenced for	Caller wanted to log only

	music up until 11pm. There is a lot of shouting when their customers leave the premises	
25/7/19	Community Protection warning served	31/8/19 – complied with notice
20/2/20	Fly tip	FPN paid
5/6/20	Covid- 19 restricted business open	(open to public)
12/6/20	Covid- 19 restricted business open	15/6/20 prohibition notice issued

2.2 The premises has the ability to serve alcohol and is therefore able to apply to have gaming machines onsite. The Government’s aim is for gaming machines to only be in premises where children's access is controlled. Qualifying alcohol licensed premises under the Licensing Act 2003 are entitled (under Automatic Entitlement) to provide two gaming machines of category C or D upon notification to the licensing authority (LA). Automatic Entitlements are only applicable to alcohol licensed premises, where there are bar facilities available on the premises for the sale and consumption of alcohol.

2.3 **Notification** (for a maximum of two machines)

To take advantage of this entitlement, the Premises Licence Holder must give notice to the Council of their intention to make gaming machines available for use, and must pay the prescribed fee.

2.4 **Permit** (for three or more machines)

Relevant premises may also apply for a permit to provide a greater number of machines. This means obtaining a Licensed Premises Gaming Machine Permit from the Council. A Licensed Premises Gaming Machine Permit allows any number of Category C or D machines to be provided in licensed premises.

2.5 Philip Lane Snooker Club has made no such application and does not hold either the normal notification of 2 machines or the Premises Gaming machine permit.

2.6 **The current licence permits:**

Supply of Alcohol

Monday to Sunday 1100 to 2300

The opening hours of the premises:

Monday to Sunday 1100 to 2330

Supply of alcohol for consumption **OFF** the premises

2.7 These review proceedings are brought under the licensing objectives crime and disorder. Mr Toprak has a previous conviction for this activity and is facing further prosecution. The machines being placed on site are not being sourced and maintained by a Gambling Commission licensed supplier as required under the Gambling Act 2005.

2.8 If a machine is illegally supplied this poses a risk to the first licensing objective of keeping crime out of gambling. A machine that does not meet the regulations and technical standard requirements may also risk the fair and open licensing

objective and therefore pose a risk of harm to members of the public interacting with these machines.

- 2.9 It is the responsibility of the business owner to ensure the machine meets the regulatory requirements prior to making them available for use to the public. If a machine fails to meet the requirements above, it is the business owner and not the machine supplier that is liable for this.
- 2.10 There are some gaming machines that are not permitted by anyone, even licensed premises. These include;
- Joker Poker gaming machines – these may not all pay out cash but accrue credits which are redeemed in another way.
 - Black Horse machines are not authorised by the Gambling Commission here in the UK and cannot be legally sited on a premises.

There is no application process that will enable premises to have these machines. Betting Terminals are only permitted in premises licensed under the Gambling Act 2005 such as licensed book makers.

- 2.11 Advice on the legality of Joker Poker machines, these machines often state 'For Amusement Only'.

The Gambling Commission Officer advised that:

1. As poker is a game of chance the machines displaying poker are gaming machines.
2. Gaming machines must be supplied by a Licensed (by the Gambling Commission) Gaming machine supplier.
3. Gaming machines must comply with the Commission's technical standards – joker poker machines have never been tested therefore would not comply with technical standards.
4. Gaming machines must meet the S240 Regulations i.e. display appropriate signage, Social Responsibility information, stakes and prizes, gaming machine category.

- 2.12 The Gambling Commission Officer also stated that if officers simply ask the premises owner to remove the machines, the machines would remain in circulation and be moved to another premises in the borough. They therefore recommended seizing the machines instead.

- 2.13 It is an offence under Section 242 of the Gambling Act 2005 for a gaming machine to be illegally sited on any premises. It is also an offence under Section 243 of the Gambling Act 2005 to supply a gaming machine which does not comply with Section 241 of the Gambling Act 2005 and/or the supplier does not have the appropriate operating licence. Both offences carry an unlimited fine and/or 51 weeks imprisonment upon conviction.

3 Other considerations

- 3.1 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. The Guidance (11.27) states that there are certain criminal activities that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. The list includes unlawful gambling.

- 3.2 The guidance (11.28) goes on to say that it is envisaged that responsible authorities will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.
- 3.3 The Licensing Authority RA is of the opinion that the problems associated with the alleged crimes are affecting the promotion of the licensing objectives. The Licensing Authorities duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.
- 3.4 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to go beyond any findings by the courts, which should be treated as a matter of undisputed evidence before them.
- 3.5 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The Licensing Authority's duty is to take steps with a view to the promotion of the licensing objectives in the interest of the wider community and not those of the individual licence holder.
- 3.6 **Options**
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.
- 3.7 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.

3.8 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.

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

The most recent statutory guidance was issued in April 2018 and applies to this application.

3.10 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.

3.11 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.

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

3.13 Section 11.27 -There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

3.14 **Section 17 of the Crime and Disorder Act 1998** states:

“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 function on, and the need to do all that is reasonable to prevent crime and disorder in its area”.

3.15 **Human Rights**

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life.
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to a fair hearing.
- Article 10 – Freedom of Expression

4. **Use of Appendices**

Appendix 1 - Application form review

Appendix 2 – Copy of current licence.

Appendix 3 – Warning letter issued during Lockdown &

Appendix 4 – Prohibition Notice

Appendix 5 – Residents representations

Background papers: **Licensing Act 2003**

Section 182 Guidance

Haringey Statement of Licensing policy

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