

**APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34 OF
THE LICENSING ACT 2003 IN RELATION TO**

**Lexx Jerkz Bar & Grill
75 Bridge Street
Walsall
WS1 1JQ.**

**HEARING BEFORE THE LICENSING SUB COMMITTEE AT 10.30AM
ON THURSDAY 17TH OCTOBER 2019 IN A:**

**Conference Room
Council House
Lichfield Street
Walsall
West Midlands**

**The matter was heard by:
Councillor Cooper
Councillor Samra
Councillor Sears**

**For the applicant:
Mr Nick Semper- Licensing Consultant**

**Responsible Authorities
N/A**

**Other Persons:
Ms B Moran**

**Two written representation from residents and written representations
from Walsall Pubwatch.**

Also Present:

**Mr S Alom Team Leader Public Health & Regulatory Services
Mr N Picken – Democratic Services Officer
Mr P Green – Legal Advisor**

Determination

An application for a premises licence variation was received on 22 August 2019 by the Licensing Authority in relation to the premises known as Lexx Jerkz Bar & Grill, 75 Bridge Street, Walsall, WS1 1JQ.

The application submitted, sought to introduce additional licensable activities to those already listed on the applicant's licence. More specifically, the application sought the additional licensable activities of Live and Recorded Music for the hours stated below and to extend the hours of Late Night Refreshment by half an hour and alcohol sales 3 hours and 59 minutes.

The hours sought were as follows:

Licensable Activities	Proposed extended times
Live Music	Monday to Sunday 11:00 – 04:00
Recorded Music	Monday to Sunday 11:00 – 04:00
Late Night Refreshment	Monday to Sunday 03:30 – 04:00
Supply of Alcohol	Monday to Sunday 00:01 – 04:00
Opening Hours	Monday to Sunday 03:30 – 04:00

In addition, the variation included an additional hour for licensable activities each Sunday and Monday of each Bank Holiday weekend, Christmas Eve and Christmas Day. New Year's Eve – from the end of permitted hour on New Year's Eve to the start of permitted hour on New Year's day.

The Sub-Committee considered the Report of the Director of Public Health that contained amongst other things, the applicant's application form, the written objections received from residents living near the premises and the written representations from Walsall Pubwatch.

Objections.

Ms Moran a resident of Eyland Road, Walsall attended the Sub-Committee hearing and made submissions that as a resident living within close proximity of the business premises she was being adversely affected by the level of noise emanating from the premises and the times that this was occurring (namely during the early hours of the morning).

Ms Moran expressed that there had been several occasions when she could hear clearly the lyrics of the songs being within the shop premises, from inside her home late at night. Ms Moran placed emphasis on the fact that it was the banging nature / heavy basslines of the music being played that was particularly problematic for her. Ms Moran was keen to make clear that she had no desire for the music to be stopped in its entirety but as she worked 12 - 13 hour shifts she could not continue having her sleep interrupted. Ms Moran

therefore wanted the volume of the music reduced and restrictions imposed on the times that the music was permitted to be played.

The written objections of another resident was also considered. Those representations largely replicated those submitted by Ms Moran

The written objections received from Walsall Pubwatch suggested that the variation applied for by the applicant was contrary to the Walsall Cumulative Impact Policy and as such, the variation permitting later hours of business would lead to an increase in crime and disorder and consequently place further strain on the already stretched resources of the police and other emergency services.

Representations on behalf of the Applicant.

The interests of the applicant were represented by Mr Nick Semper.

On behalf of the applicant Mr Semper submitted that the Sub –Committee did not have any actual evidence against the applicant. It was submitted that although the applicant was mindful of the representations submitted against the application, the Environmental Health Department being the responsible authority in relation to noise nuisance, had not submitted any representations which Mr Semper maintained they would have done, had it been established that the applicant had been responsible for generating statutory noise nuisance. Mr Semper emphasised that the applicant had undertaken 12 successful TEN events over the last year without complaint, more specifically no issues had arisen appertaining to statutory noise nuisance.

Notwithstanding the above, it was submitted by Mr Semper that the applicant had still agreed mediated voluntary conditions with Walsall Council Community Protection to keep all windows and doors closed between 23.00 hours and closing time. Furthermore, both amplified and unamplified music to be kept at a reasonable level so as not to cause nuisance after 23.00 hours.

In relation to the representations submitted by Walsall Pubwatch, Mr Semper expressed his surprise that such representations had been received. It was advocated that Pubwatches are made up of businesses within the locality whose business interests could be conceivably damaged by a change in an operating schedule of another business premises. Walsall Pubwatch could not in Mr Semper's submission be deemed a disinterested party but a party with a 'vested interest' in the outcome of the application.

Mr Semper reiterated that the existence of a Cumulative Impact Policy (CIP) did not place a blanket ban on applications to vary a licence where the premises fall within a CIP area. The Committee could only use a cumulative impact assessment to refuse an application, if relevant representations were made. Mr Semper rejected the notion that representations from competitor operators with vested interests could be considered relevant representations. In any event Mr Semper submitted that a CIP created a rebuttable presumption that applications for licences that are likely to add to the existing

cumulative impact would be refused “unless the applicant can demonstrate that there will be no negative cumulative impact on the licensing objective.” Mr Semper once again made reference to the successful TEN events where there had been no interventions from the Environmental Health Department.

Mr Semper with reference to the Thwaites case submitted in response to the suggestion that the granting of the applicant’s application would lead to an increase in crime and disorder was completely unsupported. Mr Semper highlighted that as the Police (the recognised responsible authority to comment and crime and disorder) had not made any representations against the application and so the Committee had no actual evidence before it to support the assertions being made. Mr Semper reiterated that once again despite the lack of evidence against the applicant on the issue of crime and disorder, the applicant had nonetheless agreed mediated voluntary conditions with the Police with regards to CCTV being installed that would operative both inside and outside of the premises.

The Sub-Committee determined to grant the application as submitted (inclusive of the agreed mediated conditions) with the additional condition that a sound limiter be installed within the premises in liaison with officers from the Environmental Health Department.

The Applicant or any person who made relevant representations has a right of appeal to Magistrates Court under Section 181 of the Licensing Act 2003.

This appeal must be commenced by notice of appeal within the period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.