



Walsall Council

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

LICENSING SUB - COMMITTEE

TBC

APPLICATION FOR A PREMISES LICENCE REVIEW UNDER SECTION 51 OF THE LICENSING ACT 2003

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

1.0 Summary of Report

1.1 For members of the licensing sub-committee to determine a review of a premises licence in respect of a Lexx Jerkz Bar & Grill, 75 Bridge Street, Walsall, WS1 1JQ. The licence is held by Lexx Jerkz Ltd. The licence permits the store to provide Live Music, Recorded Music, Late Night Refreshments and to sell alcohol for consumption on the premises. The review application is made on behalf of the Chief Constable of West Midlands Police ("WMP"), a responsible authority under section 51 of the Licensing Act 2003 (the Act). WMP submitted this review application on the following grounds:

- The Prevention of Crime & Disorder
- Public Safety
- Prevention of Public Nuisance

1.2 Relevant representations, in support of WMP's review application, have been received from Community Protection, West Midlands Fire Service and two local residents.

1.3 The application cannot be determined under officer delegated authority.

2.0 Recommendations

2.1 That the licensing sub-committee hold a hearing to consider the application to review the premises licence and the further relevant representations and take such steps, if any, as it considers appropriate and proportionate for the promotion of the licensing objectives in relation to this premises.

2.2 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- (a) modify the conditions of the premises licence (which includes adding new conditions or altering or omitting any existing condition including permitted hours);
- (b) exclude a licensable activity from the scope of the licence;
- (c) remove the designated premises supervisor;
- (d) suspend the licence for a period not exceeding three months; or
- (e) revoke the licence.

(Where the authority takes a step within (a) or (b) above, it may provide that the modification or exclusion is to have effect only for a specified period not exceeding three months).

3.0 Background information

3.1 A premises licence has been in place for Lexx Jerkz Bar & Grill since the 11th July 2015. A copy of the premises licence is attached as **Appendix 1**.

3.2 A street map of the locality and shop front is given as **Appendix 2**.

3.3 The premises is permitted to provide the following licensable activities:

Licensable Activities	Days	Time
Live Music, Recorded Music,	Monday to Sunday	11:00 – 04:00
Late Night Refreshment	Monday to Sunday	23:00 – 04:00
Sale of Alcohol (for Consumption on the Premises)	Monday to Sunday	11:00 – 04:00
Opening Hours	Monday to Sunday	11:00 – 04:30

3.4 Lexx Jerkz Ltd have held the Premises Licence since the 5th March 2020. Prior to that date, in October 2019, the licensing sub-committee considered an application to vary the licence by adding live and recorded music as licensable activities and to extend the permitted terminal hours for licensable activities to 04:00. Residents and Pubwatch objected to the variation. Following a hearing, the licensing sub-committee granted the variation with an additional condition that a sound limiter be installed. A copy of the decision notice is attached as **Appendix 3**.

3.5 WMP's application to review the premises licence under section 51 of the Licensing Act 2003 is dated 9 August 2022 and was received by the Council on the same day. The review application was served on the licence holder by hand on the 10 August 2022 and the consultation started on the 11th August 2022. A copy of the review application is attached as **Appendix 4**.

3.6 In their Review document WMP have reported a number of incidents and issues of concern occurring between 1st August 2021 – 7th August 2022 associated with the premises and its management. The full report of incidents can be found in the Review Application form to which the sub-committee is referred at **Appendix 4**. The incidents relate to:

- a) A high-level of violence, assaults and public order offences involving customers of Lexx at or immediately outside the premises. Some customers were reported as being drunk.
- b) Operating after permitted hours.
- c) Repeated incidents of open cannabis use in the premises.
- d) The absence of a DPS (Camilla Thomas) for a period after she resigned.
- e) Failures of the licence holder to respond to warnings issued by the authorities both in writing and in meetings.
- f) High level of noise nuisance complaints arising from the operation of the venue.
- g) Serious fire safety issues identified by West Midlands Fire Service in September 2021 resulting in a prohibition notice being issued. In October 2021 the notice was amended to restrict the capacity to 60 persons in the front bar and a further 60 in the back.
- h) Lack of adequate procedures to ensure the capacity limits were not breached.
- i) Lack of effective interventions and management of customers by door supervisors.
- j) Failure to comply with search procedures set out in the venue's Drugs Policy.

- k) In October 2021 the licence holder was placed on a 3 month action plan which failed to resolve the issues.
- l) Positive drug swab in the toilets.
- m) Breaches of the no smoking legislation by staff and customers in breach of the Health Act 2006.
- n) Intelligence that gang nominals would be attending the venue.
- o) On 23rd December 2021 – WMP deemed the 3 month action plan, which was communicated by letter on the 14th October, as inactive as they were unable to communicate effectively with the Premises Licence Holder.
- p) The poor track record of Derrick Minnott. Mr Minnott was previously a director of the licence holder company and since then has presented himself to authorities as the manager. Previously he was associated with another venue in Wolverhampton which was subject to premises licence review determined in April 2018. That review cited incidents of cannabis use at the premises, breach of licence conditions, incidents of violence and disorder, search failures, gang nominals attending the venue, failures to respond to police warnings, and lack of confidence in the management. Wolverhampton Council revoked the licence due to the repeated failings.

3.7 The police indicate that they have no confidence in the management of the premises which has shown a disregard for the licensing objectives and invite the licensing sub-committee to consider revoking the premises licence.

3.8 The police intend to supply a full evidence bundle prior to the hearing (and after the preparation of this Report).

4. **Representations**

4.1 Representations/Responses from Responsible Authorities

Public Health

Appendix 5 is a copy of the response from Public Health Walsall received on the 12 August 2022. **No comments** on the attached.

West Midlands Fire Service

Appendix 6 is a copy of the **representation** made by West Midlands Fire Service on the grounds of Public Safety. The premises was visited by the Fire Authority on 28 September 2021 and 1 October 2021. The Fire Authority found serious fire safety deficiencies at the venue which resulted in the serving of a Prohibition Notice which initially barred use of the external area and, following the installation of a further exit door, restricted the safe capacity of the venue to 60 persons within the internal bar and 60 persons in the external area (beer garden and smoking shelter). The licence holder unsuccessfully appealed the Prohibition Notice. There are continued concerns the capacity limit is being breached. The Fire Authority has concerns that the Public Safety Objective may not be suitably promoted by the licence holders.

Community Protection (Noise Pollution)

Appendix 7 is a copy of the **representation** from community protection (noise pollution) on the grounds of Public Nuisance. Community Protection have received 25 noise complaints for the premises between July 2021 to September 2022. Complaints are from local residents and relate to the playing of loud music at the venue in the early hours.

The Community Protection team produce as Appendices: 1) Some 37 noise recordings received from three different residents, 2) an assessment of those recordings, 3) a timetable of meetings or conversations with the licence holder, 4) a location map showing the venue and residential properties in the locality.

Community Protection are concerned that the venue has failed to respond to warnings in regard to the noise complaints and continue to play music at unreasonable levels. They indicate that the licence holder has demonstrated a complete disregard for regulation, neighbours within the vicinity and failed to co-operate with the licensing authority in every respect.

Community Protection have no confidence in the licence holder and support the police request that the licence be revoked.

4.2 Representations from 'other persons'

Appendix 8 is a copy of the **representations** received from two local residents.

The first representation from Mr Peter Ford who raises concerns about noise and the failure to manage the premises and its customers, particularly on departure. He cites customers involved in "horrendous fights" when leaving the venue disturbing people's sleep.

Mr Ford indicates “*it would be no loss to the area if Lexx Bar and Grill was permanently closed, it causes far more distress to local homeowners than it’s worth*”.

The second representation from Mr Jason Barratt raises concerns regarding the repeated noise nuisance caused by the venue’s operation which has affected his sleep-patterns and mental health. He submits a number of noise recordings from June 2022 recording the noise he suffers.

5. Walsall Council Licensing Policy

- 5.1 Please click this link to access Walsall Council’s Statement of Licensing Policy or copy the URL address into a search bar:

https://go.walsall.gov.uk/business/licensing_and_regulation/alcohol_and_entertainment/premises_licence

6. Resource Considerations.

- 6.1 **Financial:** Any decision taken by the Licensing Authority may be appealed to the Magistrates’ Court. The Licensing Authority may have to bear the costs of defending such an appeal.
- 6.2 **Legal:** Any received application for review must be relevant to the promotion of the licensing objectives namely: Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance, and Protection of Children from Harm.

In determining the review application the licensing sub committee must have regard to:

- The need to promote the four licensing objectives.
- Representations made.
- Relevant sections of the Licensing Act 2003.
- Relevant sections of the statutory guidance issued under s.182 of the Licensing Act 2003.
- The Licensing Authority’s Statement of Licensing Policy.

- 6.3 **Appendix 9** is a plan showing the location, licensable activities and licensed hours of other licensed premises within a 100 metre radius of Lexx Jerkz Barr & Grill.

7. Relevant extracts from Section 182 Guidance:

DPS

- 7.1 Paragraph 10.28 of Section 182 Guidance issued under The Licensing Act 2003 states:

The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives.

Reviews

- 7.2 Chapter 11 of the section 182 Guidance deals with “Reviews”. The following paragraphs may be of particularly relevance:

11.1 - 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

11.7 - In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.

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 cooperation.

11.19 - Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- *modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- *exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- *remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- *suspend the licence for a period not exceeding three months;*
- *revoke the licence.*

11.20 - In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.21 - For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 - Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

Reviews arising in connection with crime

11.24 - A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's

role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 - 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 attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 - 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 and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

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.

11.28 - It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are 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.

Public Safety

2.7- Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.8- A number of matters should be considered in relation to public safety. These may include:

- Fire safety;
- Ensuring appropriate access for emergency services such as ambulances;
- Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
- Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
- Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
- Ensuring appropriate and frequent waste disposal, particularly of glass bottles;

- *Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and*
- *Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).*

2.9- The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.38- 8.46), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

Safe capacities

2.12- “Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

2.13- The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act¹, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of those premises should be.

2.14- Public safety may include the safety of performers appearing at any premises, but does not extend to the prevention of injury from participation in a boxing or wrestling entertainment.

Public Nuisance

2.15 - *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.*

2.16 - *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.*

2.17 - *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.*

2.18 - *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.

2.19 - 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 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.

Representations from Responsible Authorities

- 7.2 Paragraph 9.12 of the Section 182 Guidance relates to the role of responsible authorities and states:

9.12 - Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

8. Relevant Representations

- 8.1 In determining whether a representation is 'relevant', and may therefore be taken into account, the Sub-Committee must have regard to Sections 18(6) and 18(7) of the Licensing Act 2003, which state:
- 8.2 18(6) For the purposes of this section, "relevant representations" means representations which—

- (a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives;
- (b) meet the requirements of subsection (7);
- (c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9); and
- (d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).

18(7) the requirements of Section 18 subsection (7), referenced above, are—

- (a) that the representations were made by a responsible authority or other person] within the period prescribed under section 17(5)(c);
- (b) that they have not been withdrawn; and
- (c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious

8.3 Licensing Objectives

The Licensing Objectives are:

- The prevention of crime and disorder;
- The prevention of public nuisance;
- Public Safety; and
- The protection of children from harm.

8.7 Conditions

Any conditions imposed on the Premises Licence :

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;

- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
 - should be written in a prescriptive format (e.g. “shall”, “must”).
- 8.8 Conditions must be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally.
- 8.9 Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition. A condition imposing CCTV cameras on a particular premises licence must be an appropriate and proportionate step in order to promote the licensing objectives.
- 8.10 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 8.11 The authority’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

Appeals

- 8.12 Where the applicant, responsible authority, or other person who has made a relevant representation is aggrieved by the decision of the Licensing Authority an appeal lies to the Magistrates’ Court.

9.0 Cumulative Impact Policy

- 9.1 The premises falls within the council’s cumulative impact policy. The cumulative impact policy was introduced in September 2008 and was amended in September 2021. 12.11 of the policy says:

“The cumulative impact policy will not be used to revoke existing licences or certificates”.

10. Staffing: Nothing arising from this report.

11. Citizen impact

11.1 None arising from this report.

12. Community Safety.

12.1 Is addressed through the review hearing process.

13. Environmental impact

13.1 None arising from this report.

14. Performance and risk management issues

14.1 None arising from this report.

15. Equality implications

15.1 When considering this review and reaching a determination the Licensing Authority must always have due regard to the Public Sector Equality Duty (“PSED”) set out in section 149 of the Equality Act 2010:

A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

15.2 The Licensing Authority’s approach to having “due regard” is based on legal principles arising from case law including those set out in *Brown vs. Secretary of State for Work and Pensions* (2008) and other cases. These principles may be summarised as:

- **Knowledge** - decision makers should be aware of their duty to have due regard to the aims of PSED.

- **Sufficient information** - decision makers must consider whether they have sufficient information in order to give proper consideration to the matters set out in the PSED. This will assist decision makers to understand the potential impact of their proposed decisions on people with relevant protected characteristics.
- **Timeliness** - public bodies must have due regard “before and at the time that a particular decision is being considered”. This means that equality must form part of the decision making process as it happens and not after the event.
- **Real consideration** - consideration of the aims of the PSED must form an integral part of the decision-making process. The PSED duty must be exercised fully, rigorously and with an open mind.
- **No delegation** - public bodies and others carrying out public functions may use their staff and third parties to assist them to assess the impact of a decision on equality. However, where they make the ultimate decision, they cannot delegate their responsibility to consider the aims of the PSED to another person.
- **Review** - public bodies must have due regard to the aims of the PSED not only when a policy is developed and decided, but also when it is implemented and reviewed. The PSED is a continuing duty.

16. **Consultation**

16.1 Carried out in accordance with prescribed regulation.

17.0 **Contact Officer**

17.1 Sayful Alom – Sayful.alom@walsall.gov.uk

18.0 **Appendices**

18.1 Appendix 1 – Current premises licence.
 Appendix 2 – Street map of the locality.
 Appendix 3 – Decision Notice 17.10.2019
 Appendix 4 – Review Application
 Appendix 5 – Public Health Response
 Appendix 6 – West Midlands Fire Service Representation
 Appendix 7 – Community Protection Representation
 Appendix 8 – Representation from Other Persons
 Appendix 9 – Location of other licensed premises