

Reba Danson

From: Neil Aston-Baugh <Neil.Aston-Baugh@wmfs.net>
Sent: 05 September 2022 10:22
To: Licensing
Cc: j.mellor
Subject: Premises licence application for review. Fire Authority representation.
Attachments: Appendix 1 review background document.docx; Apendix 2 Prohibition.Notice (1) 6th October 2021.pdf; Appendix 3 capacity management policy.pdf

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OFFICIAL

LICENSING ACT 2003
NAME OF PREMISES: Lexx Jerkz Bar & Grill
ADDRESS :75 Bridge Street Walsall WS1 1JQ

I am in receipt of an application which has been made to review the Premises Licence which is currently in force with regard to the above address.

The Fire Authority is hereby making Representations (under the Public Safety Objective) to the review and wishes to support the process and advise the Licensing Subcommittee on matters of Public Safety.

In support of the review, a background report by the Fire Authority is attached as **Appendix 1**

The premises have been visited by The Fire Authority and serious fire safety deficiencies existed at that time which resulted in the serving of a prohibition notice to restrict the safe capacity. A copy of the notice is attached as **Appendix 2**

Following a request, The Fire Authority has received a document from Derrick Minott regarding management of the safe capacity this is attached as **Appendix 3**.

The Fire Authority has concerns that the public Safety Objective may not be suitably promoted by the Duty Holders.

Should you require any further information, please do not hesitate to contact me.

Regards

Neil Aston-Baugh

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DY4 7NZ

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Appendix 1

Licensing Act 2003

Premises Licence Review Background Document Lexx Jerkz Bar & Grill. 75 Bridge Street Walsall WS1 1JQ

1. The Regulatory Reform (Fire Safety) Order 2005, places a mandatory duty upon Responsible Persons to take General Fire Precautions to ensure, so far as is reasonably practicable, the safety of Relevant Persons. Relevant Persons include any person who is lawfully on the premises and any person in the immediate vicinity of the premises who is at risk from a fire on the premises. It includes employees, workers carrying out repairs and maintenance and people making deliveries. It would certainly include customers visiting licenced premises and using its bar, restaurant and/or or function room/s. It would also include anyone living and sleeping on the premises. General fire precautions which include:

i. the need to take measures to assess and reduce the risk of fire.

iv. measures for ensuring that the means of escape can be safely and effectively used at all time

It also gives authorised officers, powers which include serving prohibition notices which can prohibit or restrict ways in which a premise are used.

Background

2. Following a visit by the officer in relation to an application to vary the premises licence on the 18th September 2019, the then premises licence applicant and stated operator of Lexx Jerkz Bar and Grill (Maureen McLaren) signed a voluntary undertaking limiting the capacity of the premises to 60 persons within the premises and 60 persons in the outside area .As part of that agreement, Ms McLaren also undertook to have identified fire safety work carried out at the premises. The voluntary undertaking including the restrictions in occupancy was agreed on the grounds of public safety.

3. As the voluntary undertaking document makes clear, it was agreed on the basis that a risk assessment report would be provided to WMFS.

Whilst evidence that some work had been carried out) and confirmation that a fire risk assessment had been completed was sent to the officer on the 19th September 2019, no copy of the fire risk assessment was ever provided during that time.

Service of First Prohibition Notice

4. An officer attended the premises again on the 28th September 2021. The visit was in direct response to concerns that the premises were using an occupancy figure of 180 rather than that agreed (60 inside, 60 outside). When the officer visited, the premises was now being operated by Lexx Jerkz Ltd. With effect from the 7th March 2020, the sole director of the limited company was Ms Melanie Jordan.

5. During the 28th September 2021 inspection visit, the officer observed evidence of poor control and areas that has been involved in fire.

6. The officer spoke to Derrick Minnott who described himself as the manager of the premises. Mr Minnott had previously been a director of the limited company. Mr Minnott showed the Officer a copy of a risk assessment dated 10th September 2019 which recorded a significantly increased occupancy level.

7. The travel distance from the rear of the beer garden to the smoking shelter side exit was at least 32 metres. Due to his concerns about fire safety and the risk of serious injury or death in the event of a fire, a Prohibition Notice Issued under the Regulatory Reform Fire Safety Order 2005 was served by another officer (Warren Davies). The Prohibition Notice (the first Notice) prohibited the use of the beer garden passed the bar area.

This was to reduce the travel distance to a safe level. The Notice also limited the occupancy within the internal bar area to 60 persons and the external area (limited to the beer garden and smoking shelter) to 60 persons.

Service of Second (revised) Prohibition Notice

8. An Officer attended the premises again on the 1st October 2021 having been requested to do so by Mr Minnott. A new fire exit had been fitted at the rear side of the garden but there was still only one final exit available. In the



officer's view, if the permitted occupancy levels were increased, there was still a risk of serious injury and death in the event of fire. The officer indicated that the beer garden area could now be used but that there were further fire safety measures required and advice was given.

The officer made clear that the occupancy levels could not be increased from the limits imposed by the 28th September 2021 Prohibition Notice. The officer also made it clear that suitable management procedures would need to be adopted to ensure that the flow of persons from inside to outside (and vice versa) would need to be closely controlled to ensure that neither area ever exceeds 60 persons.

9. That second Prohibition Notice was served on the 6th October 2021 and a copy is attached as appendix 2.

10. These were high risk premises with a number of significant fire safety deficiencies. There was evidence of poor fire safety management (a build up of debris under decking, discarded smoking materials and evidence of a fire in the tent above the barbecue and a fire had occurred in the dempster bin located in the bin area). The Fire and Rescue Authority served a Prohibition Notice because in the view of the fire safety inspecting officers, there was a risk to relevant persons of death or serious injury in the event of a fire.

Appeal

11.An appeal against the prohibition notice brought by LEXX JERKZ LTD.

12. The appeal was dismissed and costs awarded against Lexx Jerks Limited which have not been recovered to date. The prohibition notice remains in force.

13. The fire Authority have since received intelligence reports from the police that suggest the safe capacity is not being managed effectively.

14. The latest police report states;

28/8/22

Sgt James:

insufficient officer numbers from 0230 Hours to enable a proactive walkthrough. I have spoken to door staff who initially stated they had 122 customers inside, but when challenged about capacity, had forgotten their cap.

Melanie has then been on the door and monetarily stated she only had 90 persons inside, but challenged about her door staffs numbers and has then stopped persons entering whilst I have been at their door, stating that the venue was now at capacity and was a one in one out from this time. the Local Authority CCTV was viewed from the point where the police left the venue to ensure that the "one in one out" direction was being followed which was the case until 02:50 hours. Nine people were then allowed entry to the premises by door staff in the following 5 minutes with no customers leaving through the same route

13/8/22

Stated 10 customers inside but they were not able to confirm exact numbers. Noted by Sgt Becky Taylor

7/8/22

Walk through. Initially said 40 persons, when challenged came back and said 85.

15. The above evidence gives concern as it seems to suggest that the safe capacity is not being effectively managed. The safe capacity is the same as the permitted capacity as set out in section 2.13 of the Licensing Act revised section 182 guidance.

16. Following report from the police, I emailed and wrote to Lexx Jerkz Ltd and other associated persons and companies, to ask for a copy of the door management strategy. On 30th August 2022 I received a document from Derrick Minott titled 'Prohibition Notice Capacity Management', which is attached as **appendix 3**

Having examined the document, it is unclear how the flow of persons is being recorded or managed. The document states;

'Both internal and External areas of the premises will be monitored by a competent member of staff to ensure the flow between the two area does not exceed the 60 inside and 60 outside as per the prohibition notice'.

17. It is unclear how this is being done if separate figures are not being recorded for each restricted area. For example, there is no mention of the use of clickers within the separate areas.



If the safe capacity is not being suitably managed this would seriously undermine the licensing objective of public safety and place persons at serious risk.

18. The fire Authority also have concerns and seek clarity, regarding the numerous changes of operator, company structure and Directors. For example, during the appeal of the notice, Derrick Minott stated that the company operating the premises were Lexx Jerkz Holdings Ltd and not Lexx Jerkz Ltd and stated that the notice was therefore incorrectly served.

This was dismissed by the court as Lexx Jerkz Ltd had made the appeal. A copy of the notice was also sent to the registered address for Lexx Jerkz Holding Ltd, in view of the appellants claim, but was returned as undeliverable.

Lexx Jerkz Holding Ltd limited are still in operation as a company and Derrick Minott is still the Director (as of 31/8/2022). I am now informed that Melanie Jordan and Derrick Minott are both resigned from Lexx Jerkz limited. The current sole director is now Sharlene Thompson however, it appears that Derrick Minott is still involved in the management of the premises and there are possibly other associated companies. For example,

CLUB LEXX LTD

Lexx JERKZ LTD

LEXX JERKZ GROUP LTD

Lexx Jerkz Holding Ltd

These all have links to other companies

For Clarity and in order for it do discharge its statutory duties, the Fire Authority wishes the premises licence holder to state who is the operating company and do any other companies or persons (and whom) have a stake in the company.

<p>URGENT – PROHIBITION NOTICE – ACTION REQUIRED REGULATORY REFORM (FIRE SAFETY) ORDER 2005: ARTICLE 31</p>
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To: LEXX JERKZ LTD

(As the responsible person / person having control of the premises)

Address: 75 Bridge Street Walsall WS1 1JQ

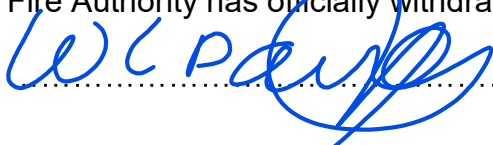
Premises to which this Notice relates: LEXX JERKZ BAR AND GRILL 75 Bridge Street Walsall WS1 1JQ

The West Midlands Fire and Rescue Authority is of the opinion that use of the premises to which this notice relates involves a risk to people so serious that use of the premises ought to be restricted.

The use of premises to which this notice relates is restricted to the following extent:	The Inside bar area must not be occupied by any more than 60 persons at any one time. The outside area (including the covered smoking shelter and beer garden beyond that), must not be occupied by any more than 60 persons (in total), at any one time,
Matter(s) which give rise to that risk are:	The means of escape from the premises (including fire exits and escape routes) are not suitably designed to allow safe egress in the event of a fire, by any more persons than described above.
The measures which must be taken to remedy the matters are:	Provide fire exits and escape routes that are suitably designed, including additional fire exits and provide all of those fire exits and escape routes so that they open in the direction of escape and are wide enough.

The restriction takes effect immediately.

The premises are restricted as stated until the specified matters have been remedied and the Fire Authority has officially withdrawn the notice.

Signed:  Dated: 6/10/21

On behalf of and duly appointed by the West Midlands Fire & Rescue Authority

Notes to accompany Prohibition Notice

- 1 You can legally appeal to this notice (under article 35 of the said Order). You must appeal 'to the magistrates' court, for the area in which the premises is situated', within 21 days from the date shown on the notice. Bringing an appeal does not have the effect of suspending this notice, unless the court so directs.
- 2 It is an offence for any person to fail to comply with the terms of this notice under Article 32(2)(h) of the Order. The offender is liable, on summary conviction, to a fine, imprisonment, or both.
- 3 In any proceedings for an offence referred to in Note 2 where the commission of an offence is due to the act or default of some other person, then that person is guilty of the offence, and may be charged with and convicted of the offence.
- 4 Nothing in the Order operates to afford an employer a defence in any criminal proceedings for a contravention by an employee.
- 5 Subject to Note 2, it is a defence for the person charged to prove that he/she took all reasonable precautions and exercised due diligence to avoid the commission of the offence. The defence does not apply to a failure to comply with article 8(a) (Duty to take general fire precautions) or article 12 (Elimination or reduction of risks from dangerous substances).
- 6 If proceedings for an offence consisting of a failure to comply with a duty or requirement so far as is practicable or so far as is reasonably practicable, it is for the accused to prove that it was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement.
- 7 Please note that in order to satisfy the "Environment and Safety Information Act 1988" the Fire and Rescue Authority must enter details of any prohibition notice onto a register to which the public have access. If you feel that such an entry would disclose secret or confidential trade or manufacturing information then you should appeal in writing to the authority within fourteen days of the service of this notice.
- 8 The works or actions specified in the notice are intended to reduce the excessive risk (to a level at which the risk is not so serious). More safety may be required to reduce the risk to an acceptable level. The Fire and Rescue Authority served this notice without prejudice to any other enforcement action that this or any other enforcement authority might take.
- 9 The Fire and Rescue Authority is willing to consider any proposals you may have to remedy the matters specified in the notice by other means.



Prohibition Notice Capacity Management

Lexx Jerkz Bar & Grill is committed to deal with the concerns of the West Midlands Fire Services in a quick and effective manner and in accordance with Article 27, The Regulatory Reform (Fire Safety) Order 2005.

In addition, to ensure we have a close working relationship with the statutory authorities including The West Midlands Fire Services and all other authorities, all concerns by the West Midlands fire services are disseminated to staff to ensure that they are aware of any issues.

In relation to internal and external capacity, our premises are aware of and operate the following procedures and systems, to ensure that our premises operate in accordance with Prohibition Notice: -

- We have a wristband entry system which helps monitors capacity at the start of each shift 80 number wristband (less any staff or contractors) are issued to our entry administration personnel then followed by 2 lots of 20 once this is issued would be maximum capacity of 120.
- Both internal and External areas of the premises will be monitored by a competent member of staff to ensure the flow between the two area does not exceed the 60 inside and 60 outside as per the prohibition notice.
- After the first lot of 80 wristband are issued, the doorstaff will be made aware that we are coming close to capacity and only 40 more is allowed entry, and
- After the first lot of 20 wristband are issued, the doorstaff will be made aware that we are coming close to capacity and only 20 more is allowed entry, and
- After the last lot of 20 wristband are issued, the doorstaff will be made aware that we are at capacity and no more is allowed entry, then
- Once we are at the full capacity then it will be on a 1 out, 1 in basis

Experience shows that our premises tend to reach its peak occupancy at least one hour before closing time and therefore should we reach capacity then we don't allow admittance to the premises, this is to deploy a strong security presence inside the premises.

Capacity check record will be kept on.
<https://www.lexxjerkz.co.uk/capacity-check>