



Walsall Council

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

LICENSING SUB - COMMITTEE

2 March 2021

APPLICATION FOR A REVIEW OF CLUB PREMISES CERTIFICATE UNDER SECTION 87 OF THE LICENSING ACT 2003

**Walsall Wood Football & Social Club
Oak Park Football Ground
Lichfield Road
Walsall
WS9 9NP**

1.0 Summary of Report

- 1.1 For members of the licensing subcommittee to determine an application to review the Club Premises Certificate, in respect of Walsall Wood Football & Social Club.
- 1.2 The review application is made by the Chief Constable of West Midlands Police, a responsible authority under the terms of the Licensing Act 2003 (the Act).
- 1.3 The application cannot be determined under officer-delegated authority.

2.0 Recommendations

- 2.1 That the licensing sub committee having regard to the submitted review application, determine what steps if any, are considered necessary for the promotion of the licensing objectives at these premises.
- 2.2 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
 - to modify the conditions of the certificate;
 - to exclude a qualifying club activity from the scope of the certificate;
 - to suspend the certificate for a period not exceeding three months;
 - to withdraw the certificate;

3.0 Background information

- 3.1 Section 71, 4(c) of the act requires that an application for a club premises certificate must be accompanied by
- a club operating schedule this is contained at **Appendix 1**
 - a plan of the premises this is contained at **Appendix 1**
 - a copy of the rules of the club this is contained at **Appendix 2**
- 3.2 In order to assist members of the Committee and those attending the Hearing a street map of the locality of Walsall Wood Football & Social Club is provided at **Appendix 3**.

West Midlands Police

- 3.3 An application to review the club premises certificate for Walsall Wood Football & Social Club has been submitted by the Chief Constable of West Midlands Police. The grounds for the review (section C of the application) relate to all four of the statutory licensing objectives
- the prevention of crime and disorder,
 - public safety,
 - the prevention of public nuisance
 - and the protection of children from harm.

A copy of the review application is provided at **Appendix 4**.

- 3.4 The initial application to review the club premises certificate and which contained summary details and the representation made by the West Midlands Police was received by the licensing authority on 18th December 2020.
- 3.5 The review application outlines the police's view that there have been repeated failures to manage this premises in line with the licensing objectives since April 2020 and throughout the period in which Coronavirus restrictions have been in place.
- 3.6 West Midlands Police have confirmed that they will provide an evidence bundle that will include;
- the Regulations in place throughout the pandemic,
 - guidance for the safe operation of licensed premises,
 - statements from local Police officers that have engaged with the premises, chairman and other staff,
 - statements from officers on Operation Reliant who attended on the 5th December 2020,
 - Licensing Officer statements,
 - Statement of LCT member detailing the significance of these issues/resources/demand
 - and bodycam footage of attending officers.

- 3.7 In accordance with prescribed regulations, following the submission of the review application Licensing and Community Protection staff arranged for a club premises certificate review notice to be displayed for 28 consecutive days at the premises and on the council's website.
- 3.8 The period for further written representations (of either a positive or negative nature) to be submitted from other responsible authorities and 'other persons' closed on 15th January 2021.

The Licensing Authority

- 3.9 On the 11th January 2021, the licensing authority were in receipt of a representation from Sarah Heath-Marshall (Community Protection Officer) acting on behalf of the licensing authority. The representation was made on the grounds of Crime & Disorder.
- 3.10 Mrs Heath-Marshalls representation shows that in the 9 year period 2012 to 2020 Walsall Wood Football & Social Club failed on seven separate occasions to pay their annual fee when required. On six of these seven occasions the licensing authority was required to suspend the club premises certificate to prevent licensable activities taking place until payment was made. It was only after this extreme action (suspension) was taken that the Club finally paid its annual fee. A copy of the representation is provided at **Appendix 5**.

Environmental Health

- 3.11 On the 14th January 2021 the licensing authority were in receipt of a representation from Paul Rooney (Team Leader for Environmental Health) indicating that the reasons for representation were on the grounds of Crime & Disorder, Public Nuisance and Protection of Children from Harm.
- 3.12 The representation mentions that on the 5th December 2020 Walsall Wood Football Club had opened their premises in breach of the Health Protection (Coronavirus Regulations) 2020 and that in response Environmental Health had served Prohibition Notices pursuant to the the Health Protection (Coronavirus Restrictions) (All Tiers) (England) Regulations 2020 on the Club.
- 3.13 The representation also includes copies of a letter sent to the Chairman of the Club on the 3rd April 2020 following a reported breach of Coronavirus restrictions and an email response to that letter. The letter informs the Club that consideration will be given to serving prohibition notices on the Club should they continue to breach Coronavirus restrictions. A copy of the representation including copies of the prohibition notices served by Environmental Health on the club in December 2020 is provided at **Appendix 6**.

3.14 No further representations have been received from other responsible authorities or other persons.

4.0 Resource Considerations.

4.1 **Financial:** Any decision taken by the Licensing Authority may be appealed to the Magistrates' Court. The Licensing Authority would have to bear the costs of defending such an appeal.

4.2 **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, 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 Act.
- The licensing authorities' policy statement (under review).

4.3 In determining the review application the sub committee can take such steps as it considers necessary for the promotion of the licensing objectives:

- Take no further action.
- to modify the conditions of the certificate;
- to exclude a qualifying club activity from the scope of the certificate;
- to suspend the certificate for a period not exceeding three months;
- to withdraw the certificate;

4.4 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.

4.5 Where the subcommittee takes the step to modify the conditions of licence or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for one such period (not exceeding three months) as it may specify.

- 4.6 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate (11.18 Guidance).

Where the applicant for review, holder of the premises licence or any other person who made relevant representations in relation to the application is aggrieved by the decision of the licensing authority, appeal is to magistrates court where the reasonableness or otherwise of the decision will be tested.

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.

- 4.4 Paragraph 11.24 of the guidance states:

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.

4.5 Paragraph 11.25 of the guidance states:

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.

4.6 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.

4.7 **Staffing:** Nothing arising from this report.

5.0 Citizen impact

5.1 None arising from this report.

6.0 Community Safety.

6.1 Is addressed through the review hearing process.

7.0 Environmental impact

7.1 None arising from this report.

8.0 Performance and risk management issues

8.1 None arising from this report.

9.0 Equality implications

9.1 None arising from this report.

10.0 Consultation

10.1 Carried out in accordance with prescribed regulation.

11.0 Contact Officer

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

12.0 Appendices

12.1

- Appendix 1 – Current Club Premise Certificate.
- Appendix 2 – Club Rules
- Appendix 3 – Street map of the locality.
- Appendix 4 – Application for review by the Chief Constable of West Midlands Police.
- Appendix 5 – Representation from Community Protection
- Appendix 6 – Representation from Environmental Health