

PREMISES LICENCE REVIEW

UNDER SECTIONS 51-52 OF THE LICENSING ACT 2003
IN RELATION TO PREMISES T/A:

LEXX JERKZ BAR & GRILL

75 Bridge Street, Walsall, WS1 1JQ

HEARING BEFORE THE LICENSING
SUB-COMMITTEE OF WALSALL COUNCIL
HELD ON 3 NOVEMBER 2022

DETERMINATION

The matter was heard by:

Councillor Sarah COOPER (Chair)

Councillor Bobby BAINS

Councillor Aftab NAWAZ

In attendance:

- Jennifer MELLOR – West Midlands Police (Applicant for Review) (“WMP”)
- Sgt Elizabeth COPE, Sgt Scott JAMES, Inspector Jamie HOBDAY– West Midlands Police
- Neil ASTON BAUGH, Diane THACKER– West Midlands Fire Service (“WMFS”)
- Sarah HEATH – Community Protection
- Michael THORPE – Licensing Agent for Premises Licence Holder (“PLH”)
- Derrick MINNOTT, Angella RAYMOND (representatives of “PLH”)
- Bernadette MORAN – Resident representor.
- Neil PICKEN – Principal Democratic Services Officer
- Jack THOMPSON – Democratic Services Officer.
- Sayful ALOM – Licensing Officer, Team Leader
- Gary GRANT – Barrister, Legal Advisor to licensing sub-committee.

DECISION

1. The Premises Licence is **REVOKED**, pursuant to section 52(4)(e) of the Licensing Act 2003.

PROCEEDINGS

2. On 3 November 2022 a licensing sub-committee of Walsall Council (“LSC”) heard a standard premises licence review instigated by the Chief Constable of West Midlands Police (“WMP”) under section 51 of the Licensing Act 2003. The review relates to a premises that trades as Lexx Jerkz Bar & Grill (“Lexx”) at 75 Bridge Street in Walsall town centre.
3. Since March 2020, the Premises Licence Holder has been Lexx Jerkz Ltd (“PLH”). The premises licence permits live and recorded music, late night refreshment, and the sale of alcohol until 4am all week with the closing hour (by which time all members of the public must be off the premises) set at 4.30am.
4. WMP’s review application engaged three of the four licensing objectives: the prevention of crime and disorder, public safety, and prevention of public nuisance. WMP invited the LSC to consider revoking the Premises Licence. WMP’s review application was supported by representations from Community Protection (Noise Pollution), West Midlands Fire Service (“WMFS”), and three local residents. One resident, Ms Bernadette Moran, spoke at the hearing (her representation was received by the Council in time but was not included in the original representations due to an administrative error).
5. Until the day of the hearing the Designated Premises Supervisor (“DPS”) was Melanie Jordan. However on the morning of the hearing an application was submitted to vary the DPS to Angella Raymond. This has immediate effect. Ms Raymond has very recently also become a Director of Lexx Jerkz Ltd and, the LSC were informed, an investor in the business. The PLH were represented by their licensing agent Mr Michael Thorpe of MRT Licensing. Attending for the PLH were Mr Derek Minnott who described himself as the freeholder, proprietor and investor

in the business who plays “a major part” in running it. The LSC noted that Mr Minnott is not a director of the PLH and he explained that he removed himself as a director due to the police’s concerns about his involvement in the business. In addition the new DPS and investor, Ms Raymond attended and addressed the hearing.

6. The licensing officer summarised the Report within the Agenda Pack.

7. The police wished to play videos of incidents or events at the premises on 3.1.22, 4.6.22, 12.8.22 and 22.10.22 in private session due to concerns that playing these videos in public may identify individuals involved in potential criminal proceedings. There was no objection from the PLH to this request. The LSC had regard to the terms of regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 and concluded that the public interest in excluding members of the public for this discrete tranche of police evidence outweighed the public interest that the whole hearing takes place in public. The police submissions therefore began in private session with the playing of the videos, and commentary on them by WMP and the PLH, but then continued in public.

RELEVANT SUBMISSIONS & FINDINGS:

8. In addition to the helpful oral representations made by all the parties to these proceedings at the review hearing, and viewing the relevant videos, the LSC has considered the written representations and documentary evidence provided by the parties and PLH as contained in the Agenda Pack. The LSC also considered a number of revised and additional conditions proposed by the PLH as an alternative to revocation.

9. During the hearing the LSC has sought to scrutinise and question the evidence presented by WMP, Community Protection, the PLH and other parties. The PLH submitted that he believed the police were unfairly targeting him because of his ethnic background and because the venue operates as a Jamaican bar. The LSC found no evidence that WMP's approach to this review was influenced by any improper motives and nothing to suggest that there has been any discrimination by WMP on racial, national or ethnic grounds.

10. The LSC has considered the long timeline of incidents and engagement provided by WMP, Community Protection, WMFS and residents as contained in the Agenda papers. The LSC has also considered the PLH's responses to these incidents set out by their representative in the hearing and in documentation served prior to the hearing.

11. Having considered and weighed up all the evidence the LSC found the following:
 - a. The premises' management habitually allows, or routinely fails to prohibit, its customers from smoking cannabis at the venue. Cannabis remains a Class B prohibited drug. We accept the evidence from WMP that officers smelt cannabis on most of their visits to Lexx or walk-bys. (We reject the suggestion from the PLH that experienced police officers may have mistaken the smell of cannabis for the hops in freshly opened bottles of beers). It appeared to the LSC that the use of cannabis at the premises was flagrant and openly accepted by the management. On one occasion on 26.6.22 a male was seen openly putting cannabis in a grinder. Sgt James confirms having seen people smoking cannabis joints in the venue by the smoking area. On another occasion on 20.2.22 a male believed to work as a member of door staff at Lexx was found outside with 6 bags of cannabis having come from Lexx. The premises' Drugs Policy appeared to the LSC to be a paper exercise only and did not reflect actual practice at the venue. Similarly, the premises' search policy appeared to the LSC to be lax. We

saw no evidence of any efforts by the management to stop the illegal use of cannabis at the premises or that there was any will to do so. It appeared to the LSC that the PLH and management condoned the unlawful use of cannabis at the premises.

- b. There were extensive efforts made by WMP and the Community Protection team to engage with the PLH and/or DPS in an effort to resolve issues without enforcement action being taken. However, the PLH repeatedly failed to respond adequately to this engagement. At some stages the responses of the former DPS, in email communications, appeared hostile to this engagement. The LSC can well understand why the WMP and Council officers have lost faith in the PLH's ability or willingness to resolve the issues that eventually led to this review application being launched. The LSC saw nothing that would lead them to believe this broken relationship would improve with a new DPS.

- c. There is a worrying lack of transparency in the identity of the operators behind this venue. Although Mr Minnott appears to be in charge, he is neither a director of the PLH nor DPS. The DPS throughout much of the timeline covered by this review application was Melanie Jordan. The LSC were told that due to ill health the DPS was varied, on the morning of the hearing, to Ms Raymond. We heard from Ms Raymond at the hearing but, the LSC regret to say, she did not fill the LSC with confidence that she had the necessary experience or abilities to turn around the serious situation at the venue or promote the licensing objectives in the future. There appeared to be a revolving door of directors in the company that held the premises licence and, recently, last-minute changes in the identity of the DPS. The LSC accepts that this situation has handicapped the enforcement of the licensing regime when issues have arisen. The promotion of the licensing objectives, ideally, requires a professional, trusting and responsive relationship between a licence holder and the responsible authorities. That was notably absent in this case.

- d. The LSC was satisfied that the premises has continued to operate beyond its terminal closing hour on a number of occasions to the detriment of the licensing objectives.

- e. The LSC is aware that Bridge Street has a number of licensed premises and by no means will every incident in that location be connected to the operation of Lexx Bar & Grill. The LSC also accepts that, save for the unlawful cannabis use, there is little to no evidence of crimes or disorder taking place *inside* the venue.

- f. However, the LSC accepts WMP's evidence that Lexx is a disproportionate contributor to crime, disorder and anti-social behaviour in the immediate vicinity *outside* the venue in the early hours of the morning which is of significant concern to police. Many of the customers appear drunk (and possibly stoned) having consumed those intoxicants inside Lexx. Further, the customers of Lexx often appear hostile to police carrying out their lawful duties. We are satisfied that these incidents, even though they occur just outside the venue, are causally linked to the operation of Lexx as a licensed premises and undermine the crime and disorder objective.

- g. Although the WMP had intelligence that gang nominals attended the venue, in the absence of this information being brought to the PLH's attention the LSC does not think it is fair to hold this allegation against the licence holder.

- h. The LSC does not accept that a video showing Mr Minnott videoing an incident, unrelated to his premises, in Bridge Street on 22 October 2022 is to his discredit. There is no evidence Mr Minnott himself posted this footage

on social media but even if there was this is not directly relevant to his ability to promote the licensing objectives at Lexx.

- i. The LSC is satisfied that the operation of the premises late at night and in the early hours of the morning has caused a public nuisance to a number of residents living nearby. We acknowledge that residents who live in the town centre cannot reasonably expect total silence even at night. The LSC also acknowledges the agent of change principle cited by the PLH's agent. But the levels of noise experienced in residents' bedrooms, from both music escape and patrons outside, particularly as described by Ms Moran at the hearing, seems wholly unreasonable. She can hear the lyrics of songs being played and it sounds as if there is sound system in her home in the early hours. Her 4-year old grandson can hear people swearing outside. When she first moved into her home the venue was a noodle bar and it was relatively peaceful. However, since Lexx began operating in the early hours the noise has seriously disturbed her sleep. The LSC has also taken account of the written representations from other residents in the Agenda papers which provide similar accounts.

- j. The evidence of public nuisance provided by individual residential representors in the review is strongly corroborated by the extensive evidence helpfully collated and presented by the Community Protection (Noise Team). This demonstrates a history of noise disturbance directly connected to Lexx's operation which is in close proximity to a number of residents' homes. The levels of disturbance have increased since the re-opening of hospitality venues after the Covid pandemic restrictions were lifted. The issues have continued even since the review application was lodged by WMP. Four residents from three households had submitted audio recordings of the noise nuisance some of which were through the Council's Noise App. In addition, the Council has received noise nuisance complaints related to Lexx's late night operation from 15 other households since September 2021. Had the operator been responsible and trustworthy, the Community

Protection team may have felt able to propose a reduction in the terminal hours to 2am and removal of regulated entertainment as an alternative to revocation of the licence. However given the lack of effective engagement by the PLH with the authorities and the PLH's lack of respect for respecting the current closing hour on the premises licence, the Community Protection team have little faith that the PLH would abide by these controls. Therefore they ask the LSC to revoke the premises licence.

- k. The WMFS have significant public safety concerns about this venue. Following reports that a fire exit door was blocked and an inspection of Lexx, in October 2021 WMFS issued a Prohibition Notice that required the capacity levels to be restricted to 60 persons in the inside bar area and 60 persons in the outside area (which includes the smoking area covered by a gazebo). The LSC notes that the PLH has made some efforts to provide additional fire escape routes. However the LSC has also seen or heard of a number of examples where the management of capacity levels at Lexx was either absent or fell woefully short (e.g. on 4.6.22, 6.8.22 and 30.8.22). The PLH accepted there existed issues of "capacity management". The LSC view this failure particularly seriously. The Prohibition Notice was only issued because WMFS believed "the use of the premises involves a risk to people so serious that its use ought to be restricted". Failure by the PLH to rigorously comply with the notice, and put systems in place to ensure there cannot be a breach, can be a matter of life and death for the customers and staff of Lexx in the event of a fire. The LSC accepts the evidence of WMFS that if there has been no breach of capacity levels that was by accident not design given the lack of adequate controls. The LSC concludes that the venue has failed to promote the public safety licensing objective.

- l. Whilst the LSC's focus has been on the operation of Lexx, the LSC has taken into account that a previous licensed premises operated by Mr Minnott named "Bond Street Tavern" in Wolverhampton had its premises licence revoked in April 2018 at a summary review hearing following a stabbing at

that premises. The LSC also notes that the reasons Wolverhampton Council gave for revoking that licence reflect issues that have arisen more recently in Lexx. These include a lack of search procedures, lack of co-operative management and staff, incidents of disorder, cannabis use at the premises, and that the problems had continued despite continued advice and support from the responsible authorities. In other words, Mr Minnott has a poor track record of operating licensed premises in a manner that promotes the licensing objectives.

RELEVANT LAW

12. We have had regard to the legal framework and extracts of the section 182 Guidance to the Licensing Act 2003 as set out in some detail in the Agenda Report. We have also had regard to Walsall Council's Statement of Licensing Policy. To avoid repetition we will not duplicate those principles in this determination but have them well in mind when reaching our conclusions.

13. The LSC has considered carefully the powers open to us at this review, which include taking no action or issuing a warning, the modification of the licence conditions (including altering hours), the removal of the DPS, excluding a licensable activity, suspension of the licence for up to 3 months and, ultimately, revocation of the licence.

14. The LSC is aware that it must only take appropriate steps in order to promote the licensing objectives and those steps must be proportionate.

15. The LSC has also had regard to the public sector equality duty (“PSED”) set out in section 149 of the Equality Act 2010 and referenced in the Agenda Report. The LSC is conscious that customers of this venue are mostly from a community with protected characteristics and any decision to revoke the licence would impact on this community. However, in our view, the action the LSC intends to take are necessary to promote the licensing objectives in a proportionate manner having regard to the PSED.

CONCLUSIONS

16. The evidence produced by WMP as applicant for this review, and the other parties who have supported the review, demonstrates, clearly in the LSC’s view, that the PLH has repeatedly failed to promote the licensing objectives of preventing crime and disorder, preventing public nuisance, and public safety. Extensive efforts by the police and council officers to engage with the PLH have failed.

17. The LSC considered whether to reduce the operating hours and add conditions to the licence but based on the evidence in this review the LSC has no confidence that the PLH would comply with these restrictions or conditions. The LSC also considered whether a suspension of the licence might be appropriate however since the same PLH would be operating the venue after the end of the suspension that would not resolve the issues apparent in this particular case. Given Mr Minnott is obviously in charge of the venue, we do not think a revolving door of DPS’s will help either.

18. We have considered all the options open to us in this review. In our view, the only appropriate and proportionate step we can take to promote the licensing objectives is the revocation of the premises licence.

RIGHT TO APPEAL

19. This determination does not have effect:
 - a. until the end of the period given for appealing against the decision, or
 - b. if the decision is appealed against, until the appeal is disposed of.

20. The Premises Licence Holder, or any person who made relevant representations, has a right of appeal to the Magistrates' Court under Section 181 and Schedule 5 of the Licensing Act 2003.

21. Any 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. There are potential costs implications upon the disposal of any appeal and appellants are advised to take legal advice in this regard.

Dated: 9th November 2022