



# Walsall Council

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## REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

### LICENSING SUB - COMMITTEE

THURSDAY 21 NOVEMBER 2024

### APPLICATION FOR A PREMISES LICENCE

### SECTION 17 OF THE LICENSING ACT 2003

**Andy's Brewhouse  
49 Boundary Road  
Streetly  
Sutton Coldfield  
B74 2JR**

#### **1.0 Summary of Report**

- 1.1 For members of the licensing sub-committee to determine an application for a premises licence in respect of Andy's Brewhouse, 49 Boundary Road, Streetly, Sutton Coldfield, B74 2JR. The application has been submitted by Licensing Leader Ltd on behalf of Andy's Ales Limited who are the applicants.
- 1.2 The application cannot be granted or refused under officer's delegated authority.
- 1.3 No representations have been made by any responsible authority.
- 1.4 The Licensing Authority have received 5 representation to the application from Other Persons.

#### **2.0 Recommendations**

- 2.1 That the licensing sub-committee determine whether the application for a premises licence in respect of Andy's Brewhouse be granted as requested, granted with additional/ modified conditions, or reject the application

#### **3.0 Background Information**

- 3.1 An application for a premises licence was received on 19 September 2024 by the licensing authority. The application and plan is given as **Appendix 1** (only the relevant pages have been reproduced).

3.3 The application seeks to provide the following licensable activities:

<b>Licensable Activities</b>	<b>Day</b>	<b>Time</b>
Live Music (Indoors)	Monday – Sunday	23:00 – 00:00
Recorded Music (Indoor)	Monday – Sunday	23:00 – 00:00
Anything Similar to Live Music, Recorded Music or Performance of Dance (Indoors)	Monday – Sunday	23:00 – 00:00
Late Night Refreshment (Indoors)	Monday – Sunday	23:00 – 00:00
Supply of alcohol (On & Off Sales)	Monday – Sunday	10:00 – 00:00
Opening Hours	Monday to Sunday	10:00 – 00:30

3.4 During the consultation period, the applicant's amended the application to reduce supply of alcohol to On Sales only.

3.5 A street map of the locality is attached as **Appendix 2**.

3.6 Copies of the premises licence application must be submitted to all statutory 'responsible authorities' under the terms of the Act.

3.7 Applications for a premises licence are required to be advertised by way of a blue site notice displayed at the premises, and a licensing notice placed in a newspaper circulating within the area. This ensures that 'other persons' (regardless of their geographic proximity to the premises) under the terms of the Act are aware of the licence application.

3.8 Any responsible authority or other person has 28 days from submission of the application to make a written relevant representation to the licensing authority.

#### **4. Representations**

##### **4.1 Representations/Responses from Responsible Authorities**

The Licensing Authority received the following responses to the consultation from responsible authorities:

### Walsall Council Environmental Health

On the 19 September 2024 Environmental Health responded to the consultation with no comments. A copy of the response is added as **Appendix 3**.

### Walsall Council Trading Standards

On the 9 October 2024 Trading Standards responded to the consultation with no comments. A copy of the response is added as **Appendix 4**.

### Community Protection – Licensing Authority

On the 11 October 2024 the Licensing Authority responded to the consultation with no comments. A copy of the response is added as **Appendix 5**.

### West Midlands Fire Service

On the 15 October 2024 West Midlands Fires Service responded to the consultation with a representation with the applicant agreeing to an undertaking with the Fire Authority who have responded to say that no hearing will be required. A copy of the response is added as **Appendix 6**.

### West Midlands Police

On 17 October 2024 the Police Licensing Officer confirmed that West Midlands Police have no concerns to the application provided that the mediated conditions agreed with the applicant form part of their licence if granted. A copy of the response is attached as **Appendix 7**.

## **4.2 Representations from ‘other persons’**

The Licensing Authority has received six representations from residents (Other Persons), with five opposing the granting of the licence and one supporting it. The objections are based on concerns regarding Crime & Disorder and Public Nuisance. Copies of these representations can be found in **Appendix 8**.

- 4.3 Upon receiving objections to the application, the Licensing Authority organised a mediation session involving the applicants, their representative, and the individuals who submitted the representations. This took place on the 15 October 2024.
- 4.4 During the meeting, attending residents had the opportunity to express their concerns to the applicant and their representative. The applicant assured the residents of their willingness to collaborate and offered to share their contact information so residents could report any issues.

- 4.5 Regrettably, some residents were unwilling to retract their representations.

## 5. **Walsall Council Licensing Policy**

- 5.1 Please follow the 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](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 would have to bear the costs of defending such an appeal.
- 6.2 **Legal:** Any representations received must be relevant to the likely effect on the promotion of the licensing objectives in respect of the application received, namely: Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance, Protection of Children from Harm. Representations which are not relevant must be rejected.

The Licensing Authority upon receipt of relevant representations and only if it is considered to be appropriate to promote the licensing objectives may consider attaching additional conditions, modifying existing conditions as given in the operating schedule, or to reject the application.

Any conditions further imposed by the Committee must be appropriate and should be tailored to the size, style, characteristics and activities taking place at the premises. They should not be merely aspirational and should not go further than what is required for that purpose.

Walsall Council has stated that at all times the Licensing Authority will try to strike a fair balance between the benefits to the community of a licensed venue and the risk of disturbance to local residents.

It should be noted, however, that the Licensing Act 2003 is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and therefore, beyond the direct control of the business holding the licence. Any imposed condition should be focused on measures within the direct control of the licence holder.

The Licensing Sub Committee must have due regard to the statute, its statement of licensing policy, and the statutory guidance issued under section 182 of the Licensing Act 2003.

Section 35 (5) of the 2003 Act states in part that relevant representations are about the likely effect of the grant of the application on the promotion of the licensing objectives.

Paragraph 2.1 of Section 182 Guidance issued under the Licensing Act 2003 states:

*“Licensing authorities should look to the police as the main source of advice on crime & disorder”.*

Paragraph 9.12 of section 182 guidance issued under the Licensing Act 2003 states:

*“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”.*

The Licensing Sub Committee may grant the application as requested, grant with additional/modified conditions attached to the premises licence or reject the application.

Where the applicant, responsible authority, or other person 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.

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

## 7.0 **Relevant Representations – Extracts from section 182 Guidance**

7.1 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:

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.

## 7.2 Licensing Objectives

The Licensing Objectives are:

- The prevention of crime and disorder;
  - The prevention of public nuisance;
  - The protection of children from harm; and
  - Public safety.
- 7.3 The Licensing Act 2003 and associated guidance suggests a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a business owner that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations to be relevant, they should be confined to the subject matter of the application.
- 7.4 There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.
- 7.5 Should the Sub-Committee decide to grant the licence with additional conditions, such conditions must comply with the requirements specified in the Section 182 Guidance - specifically:

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must,” “shall” and “will” is encouraged. Licence conditions:

- 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.

7.6 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.

7.7 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.

7.8 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.

7.9 Applicants have the opportunity to demonstrate how they intend to promote the licensing objectives through the operating schedule, section 8.41 of the guidance states: “in completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area.”

7.10 They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps, they propose to take to promote the licensing objectives. Licensing authorities and

responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.”

- 7.11 Applicants are expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:
- the layout of the local area and physical environment, including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
  - any risk posed to the local area by the applicants’ proposed licensable activities; and
  - any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.
- 7.12 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.
- 7.13 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.
- 7.14 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.
- 7.15 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises.
- 7.16 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 (2.2 of the guidance).

- 7.17 Where a local authority's Director of Public Health in England (DPH)<sup>6</sup> or Local Health Board (LHB) (in Wales) exercises its functions as a responsible authority, it should have sufficient knowledge of the licensing policy and health issues to ensure it is able to fulfil those functions. If the authority wishes to make representations, the DPH or LHB will need to decide how best to gather and coordinate evidence from other bodies which exercise health functions in the area, such as emergency departments and ambulance services (9.20).
- 7.18 Health bodies may hold information which other responsible authorities do not, but which would assist a licensing authority in exercising its functions. This information may be used by the health body to make representations in its own right or to support representations by other responsible authorities, such as the police. Such representations can potentially be made on the grounds of all four licensing objectives. Perhaps the most obvious example is where drunkenness leads to accidents and injuries from violence, resulting in attendances at emergency departments and the use of ambulance services. Some of these incidents will be reported to the police, but many will not. Such information will often be relevant to the public safety and crime and disorder objectives (9.21).
- 7.19 However, health bodies are encouraged to make representations in respect of any of the four licensing objectives without necessarily seeking views from other responsible authorities where they have appropriate evidence to do so. There is also potential for health bodies to participate in the licensing process in relation to the protection of children from harm. This objective not only concerns the physical safety of children, but also their moral and psychological well being (9.22).
- 7.20 Evidence relating to under 18s alcohol-related emergency department attendance, hospital admissions and underage sales of alcohol, could potentially have implications for both the protection of children from harm and the crime and disorder objectives. Health bodies can provide evidence to lead or support representations in relation to this objective (9.23).
- 7.21 The Licensing Sub Committee may grant the application as requested, grant with additional/modified conditions attached to the premises licence or reject the application.

7.22 Where the applicant, a responsible authority, or other person who has made a relevant representation is aggrieved by the decision of the Licensing Authority, they may appeal to the Magistrates' Court.

## **8.0 Citizen Impact**

8.1 Nothing arising from this report.

## **9.0 Community Safety**

9.1 Is determined as part of the hearing process.

## **10.0 Environmental Impact**

10.1 Nothing arising from this report.

## **11.0 Performance and risk management issues**

11.1 Nothing arising from this report.

## **12.0 Equality implications**

12.1 When considering this application 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..

### **13.0 Consultation**

13.1 As prescribed by regulation.

### **14.0 Associated Papers**

- 14.1 Appendix 1 – Current premises licence.  
Appendix 2 – Premises application.  
Appendix 3 – Proposed Conditions  
Appendix 4 – Street map of the locality.  
Appendix 5 – Response from Public Health  
Appendix 6 – Response from Community Protection  
Appendix 7 – Response from West Midlands Police  
Appendix 8 – Representations from Other Persons

### **14.0 Contact Officer**

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