



## REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES TO THE

### LICENSING SUB – COMMITTEE

22<sup>nd</sup> June 2022

### APPLICATION FOR A NEW PREMISES LICENCE

### UNDER SECTION 17 OF THE LICENSING ACT 2003

**Ace Cocktail Bar  
9-11 Leicester Street  
Walsall  
WS1 1PT**

#### **1. Summary of Report**

- 1.1. The purpose of this report is for the Licensing and Safety Sub-Committee to determine an application for a new premises licence in respect of Ace Cocktail Bar, 9-11 Leicester Street, Walsall, WS1 1PT. The premises is described as a Cocktail bar and seeks permission to sell alcohol for consumption on the premises (only) with Recorded Music and Late Night Refreshment.
- 1.2. The application was made under section 17 of the Licensing Act 2003 and is due to be determined under section 18.
- 1.3. The applicant is Ace Cocktail Bar Ltd with a registered address at 9-11 Leicester Street, Walsall, WS1 1PT. Mr Donoval Kenrick will be specified as the Designated Premises Supervisor if this premises licence is granted.
- 1.4. During the consultation period the Council received representations to the application from West Midlands Police, West Midlands Fire Service, Community Protection (noise pollution team) a local resident and from Pubwatch objecting or raising concerns as summarised further below.

#### **2. Options**

- 2.1. The Sub-Committee is required to hold a hearing to consider the application and relevant representations and determine whether to:
  - grant the licence as applied for;
  - grant the licence with modifications or conditions; or
  - refuse the application.

### 3. **Background Information**

- 3.1. The application for a premises licence, attached as **Appendix 1**, was received by the Licensing Authority on 25 April 2022.
- 3.2. A summary of the licensable activities and times applied for is provided in the table below (NB: these have subsequently been reduced following mediation):

<b>Licensable Activities/ Opening Hours</b>	<b>Days</b>	<b>From</b>	<b>To</b>	<b>Mediated hours</b>
Recorded Music	Monday to Sunday (inclusive)	12:00	00:30	12:00 – 23:00
Late Night Refreshment	Monday to Sunday (inclusive)	23:00	00:00	removed
Sale of alcohol for consumption on the premises (only)	Monday to Sunday (inclusive)	12:00	00:30	12:00 – 23:00
Hours open to public	Monday to Sunday (inclusive)	12:00	00:30	12:00 – 23:00

- 3.3. Location plans of the locality are attached as **Appendix 2**.
- 3.4. In accordance with regulations the application was served on all the statutory 'responsible authorities'.
- 3.5. The Licensing Act 2003 specifies that new premises licence applications must be advertised in the following ways:
- a) by way of a blue site notice displayed at or on the premises for a statutory consultation period of 28 consecutive days starting on the day after the day on which the valid application was given to the Licensing Authority. The last day for representations was **23 May 2022**.

- b) by publishing a licensing notice in a newspaper (or similar) circulating within the area of the premises, by the tenth working day of the consultation period; and
  - c) by publication of a notice on the Licensing Authority's website for no less than 28 days during the consultation period.
- 3.6. This combination of requirements ensures that 'other persons', regardless of their status or geographic proximity to the premises, are aware that an application for a premises licence has been made and of their right and opportunity to comment, should they wish to do so.
- 3.7. The blue notice was displayed and the newspaper notice published in accordance with the requirements of the Licensing Act 2003.
- 3.8. Any responsible authority, or other person, may submit a representation to the Licensing Authority, however generally only relevant representations received during the advertised consultation period may be considered when determining the application.
- 3.9. The applicant has nominated Mr Donoval Kenrick James as the Designated Premises Supervisor (DPS). He holds a personal licence issued by Sandwell Council.

#### **4. Representations**

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

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

##### West Midland Fire Service

On 13 May 2022, West Midland Fire Service (WMFS) made a representation to the application due to these public safety concerns:

- There are no suitable method for detecting or raising an alarm in case of fire;
- The means of escape from the premises are not adequate for the floor space and will need to be restricted to 60 persons;
- The emergency lighting needs upgrading.

The applicant has subsequently agreed a voluntary undertaking to complete works to the appropriate standards with WMFS. A copy of the email trail is attached **Appendix 3**.

##### Walsall Council Planning Department

On 17 May 2022, the Planning Team confirmed that they had no comments in respect of the application. The email response is attached as **Appendix 4**.

### Walsall Council Environmental Health

On 25 April 2022 Environmental Health confirmed that they had no concerns in respect of the application. The email response is attached as **Appendix 5**

### West Midlands Police

On 29 April 2022, the Police Licensing Officer confirmed that West Midlands Police **objected** to the grant of the licence on the grounds that it would undermine the following Licensing Objectives:

- The prevention of crime and disorder;
- The prevention of public nuisance; and
- Public safety.

The police representation refers to:

- Walsall Council's Cumulative Impact Policy;
- A potential increase in Crime and Disorder
- An increase in violence in Walsall town centre which is having a great impact on the Police.
- Leicester Street is in a hot spot area of violence.
- The area is already subject to a multi-agency Operation Aragonite which aims to improve the safety of customers coming in to town during the night time economy.
- Further information to be supplied prior to the hearing.

A copy of the police representation is attached as **Appendix 6**.

### Walsall Council Community Protection (as Noise Pollution)

On the 19 May 2022 Community Protection (Noise Pollution team) a responsible authority, made a representation and mediated the following conditions with the applicant which will form part of the licence conditions should members grant the licence:

#### Public Nuisance

1. A noise limiter must be fitted to the musical amplification system and maintained in accordance with the following criteria:

(a) the limiter must be set at a level determined by and to the satisfaction of an authorised Environmental Health Officer, so as to ensure that no noise nuisance is caused to local residents or businesses,

(b) The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of the authorised Environmental Health Officer and access shall only be by persons authorised by the Premises Licence holder,

(c) The limiter shall not be altered without prior written agreement from the Environmental Health Consultation Team,

(d) No alteration or modification to any existing sound system(s) should be affected without prior knowledge of the Environmental Health Consultation Team, and

(e) No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.

2. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
3. Windows and doors to be kept closed from 10 pm.
4. Licensable activities and the opening hours for the premises have been agreed to be reduced to 12.00 midday to 23.00 hours. The applicant is looking to remove the licensable activity of late night refreshment.

A copy of the email is attached as **Appendix 7**.

#### Other responsible authorities

No comments were received from any other responsible authorities in relation to this application.

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

On the 4 May 2022 the Licensing Authority received a representation from Parmjit Lakha objecting to the grant of the licence on the grounds of:

- Crime & Disorder
- Public Nuisance
- Public Safety
- Protection of Children from Harm

Concerns raised are:

- She lives above the premises.
- Once all three pubs are closed people sit outside her front door and smoke cannabis.
- Fighting, urinating in the corner of the council building.
- She has been dealing with this for 15 years.
- When other tenants have left doors open she has encountered people smoking and drinking in her building.
- Listening to Music and bass. No double glazing as the premises is a listed building.
- Fights occurring. She is scared to leave the building sometimes.

A copy of the representation is attached as **Appendix 8**.

4.3 **Appendix 9** is a copy of the representation received from Pubwatch (as an “other person”) objecting to the grant of the premises licence on the grounds that:

- The premises falls within the Cumulative Impact Policy.
- The town centre Night Time Economy (“NTE”) is already saturated with venues.
- Another venue will only add to the Crime & ASB levels.
- Pubwatch members think this venue will bring in a different audience that will clash with the current NTE community in a bad way therefore possibly increasing ASB.

## **5. Cumulative Impact Policy**

- 5.1. “Cumulative impact” is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area.
- 5.2. The concept of “Cumulative impact” has been described within the section 182 Guidance and used by licensing authorities within their statements of licensing policy since the commencement of the 2003 Act. ‘Cumulative impact assessments’ were introduced in the 2003 Act by the Policing and Crime Act 2017, with effect from 6 April 2018. This places cumulative impact policies on a statutory footing.
- 5.3. As the premises which this application is concerned falls within the Council’s cumulative impact area, the cumulative impact policy must be considered in relation to this application.
- 5.4. A cumulative impact policy applies in specified areas where there is a high saturation of licensed premises, such as those selling alcohol or providing late night refreshment, where serious problems of nuisance and disorder may arise in the general locale. Such problems generally occur as a result of, or can be exacerbated by, large numbers of

drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport (see 14.22 of the Section 182 guidance).

- 5.5. Tension among queuing customers often leads to conflict, disorder and anti-social behaviour. Moreover, regular large concentrations of people can also attract criminal activities such as drug dealing, pick pocketing and street robbery.
- 5.6. Local services such as public transport, public lavatory provision and street cleaning may not be able to meet the demand posed by such concentrations of drinkers, leading to issues such as street fouling, littering, traffic and public nuisance caused by concentrations of people who cannot be effectively dispersed quickly (14.22 of the guidance).
- 5.7. Section 12 of Walsall Council's Statement of Licensing Policy sets out the cumulative impact policy. The cumulative impact policy was reviewed in 2021 following a cumulative impact assessment which showed that licensed premises within the WS1 post code area were having a cumulative impact and the licensing objectives were being undermined. The premises concerned does fall within the cumulative impact area.
- 5.6 12.6 of the policy states: "In light of the findings, the Authority, proposed a cumulative impact policy (amended in 2021) in respect of applications relating to the sale or supply of alcohol for consumption 'on and off' the premises' and for the provisions of late-night refreshment in a defined area of Walsall".
- 5.7 12.7 of the policy states: "In this area applicants will be required to demonstrate how the granting of their licence will not have a cumulative impact on the licensing objectives. Where relevant representations are received to the application, the matter will be referred to the Licensing Sub-Committee to make a decision on the application".
- 5.8 12.8 of the policy states: "Walsall Council recognises that any special policy regarding cumulative impact is not absolute and where licence applications will not add to cumulative impact and no relevant representations received, the licence/certificate will be granted as applied for".
- 5.9 12.10 of the policy states: "In determining an application, Walsall Council will have particular regard to the licensing objectives, the cumulative effect, and any adverse impact that may arise from the saturation of premises in the defined area".
- 5.10 12.12 of the policy states: "Walsall Council recognises the difference between cumulative impact and the commercial need for premises in an area. Need and market forces are not matters for the Authority to consider as part of its licensing function".

6. **Walsall Council Licensing Policy** (in effect from September 2021)
  - 6.1. Please click this link (**Appendix 10**) 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)
  - 6.2. **Appendix 11** is a link to the Council's Cumulative Impact Assessment.
  - 6.3. **Appendix 12** is a copy of the applicant's volunteered conditions and mediated conditions with the Licensing Authority which will form part of the licence should the application be granted.
  - 6.4. **Appendix 13** is a plan outlining other licensed premises within 75 metres of 9-11 Leicester Street. This also includes the type of premises and also the licensed hours permitted for the premises within close proximity of 9-11 Leicester Street.
7. **Resource Considerations**
  - 7.1. **Financial:** Application fees are set by central government and are non-refundable. The Licensing Authority would have to cover the cost of any successful appeals made to magistrate's court.
  - 7.2. 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.
  - 7.3. **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.
  - 7.4. At a hearing, the Licensing Authority upon receipt of relevant representations, and only if it is considered to be appropriate and proportionate to promote the licensing objectives. may consider attaching additional conditions, modifying conditions proposed in the operating schedule of the application (including hours), or to reject the application.
  - 7.5. Any conditions further imposed by the committee must be appropriate and proportionate 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 needed for that purpose.



- 7.6. 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.
- 7.7. The Licensing Sub Committee must have due regard to Walsall Council's Statement of Licensing Policy issued in 2021 and the statutory guidance issued under section 182 of the Licensing Act 2003.

## **8. Relevant Extracts from Section 182 Guidance:**

- 8.1. The 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 and disorder."*
- 8.2. *14.19 - There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing object "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.*
- 8.3. *8.43 - "Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.*
- 8.4. *9.4 - A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.*

## **9. Relevant Representations**

- 9.1. 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:
- 9.2. 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

### 9.3. 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.

9.4. For example, 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 businessperson 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.

9.5. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation.

9.6. 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.

- 9.7. 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:

1.16 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.

- 9.8. 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.

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.

- 9.9. 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.

- 9.10. 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”.

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”.

- 9.11. 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.

- 9.12. 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.

- 9.13. 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.

- 9.14. 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.
- 9.15. 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.
- 9.16. The Licensing Sub Committee may grant the application as requested, grant with additional/modified conditions attached to the premises licence or reject the application.
- 9.17. 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.

**9.18. Staffing issues:**

None arising from this report.

**10. Citizen Impact**

- 10.1. Residents or businesses ('Other Persons') within the licensing authorities' area are able to submit 'relevant representations'

**11. Community Safety**

- 11.1. Issues raised in relation to potential public safety are addressed by committee through the decision-making process.

**12. Environmental Impact**

- 12.1. Nothing arising from this report.

**13. Performance and Risk Management Issues**

- 13.1. Nothing arising from this report.

**14. Equality Implications**

14.1 When considering this application and reaching a determination the Licensing Authority must always have due regard to the Public Sector Equality Duty 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.*

14.2 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.

**15. Consultation**

15.1. Consultation/advertising is carried out in accordance with prescribed statutory regulations.

**16. Associated Papers**

Appendix 1 – Application.

Appendix 2 – Location Plans

Appendix 3 – Representation from West Midlands Fire Service

Appendix 4 – Response from Planning

Appendix 5 – Response from Environmental Health

Appendix 6 – Representation from West Midlands Police

Appendix 7 – Mediated Conditions with Community Protection

Appendix 8 – Representation from Other Person (Parmjit Lakhar)

Appendix 9 – Representation from Other Person (Pub Watch)

Appendix 10 – Link to Walsall Council's Statement of Licensing Policy (in effect from 20 September 2021)

Appendix 11 – Link to Walsall's Cumulative Impact Assessment

Appendix 12 – Applicant's volunteered and mediated conditions

Appendix 13 – Licensed premises within close proximity of Application

**17. Contact Officer**

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