

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES TO THE

LICENSING SUB – COMMITTEE

24 SEPTEMBER 2021

APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE

LICENSING ACT 2003

**Cobra Creative Studios
Unit 21, Owen Road Industrial Estate
Willenhall
Walsall
WV13 2PY**

1. Summary of Report

- 1.1. The purpose of this report is for the Licensing and Safety Sub-Committee to determine an application made under Section 17 of the Licensing Act 2003 for a new premises licence in respect of Cobra Creative Studios, Unit 21, Owen Road Industrial Estate, Willenhall, WV13 2PY.
- 1.2. The application was submitted by Ian Rushton (JL Licence and Retail), on behalf of Cobra Creative Studios (the applicant).
- 1.3. During the consultation period the licensing authority received representations to the application from responsible authorities.

2. Recommendations

- 2.1 Members are to consider the application and determine whether the application can be granted as applied for, granted with modifications or conditions or the application may be refused.

3. Background Information

- 3.1. The application for a premises licence, attached as **Appendix 1**, was received by the Licensing Authority on 29 July 2021.
- 3.2. A summary of the licensed activities and times applied for is provided in the table below:

| Licensable Activities | Days | From | To |
|--|---------------------|-------------|-----------|
| Provision of plays (Indoors) | Monday to Sunday | 10:00 | 05:00 |
| Provision of Films (Indoors) | Monday to Sunday | 10:00 | 05:00 |
| Indoor Sporting Events | Monday to Sunday | 10:00 | 05:00 |
| Provision of Boxing or Wrestling Entertainments (Indoors) | Monday to Sunday | 10:00 | 05:00 |
| Live Music (Indoors & Outdoors) | Monday to Sunday | 10:00 | 05:00 |
| Recorded Music (Indoors & Outdoors) | Monday to Sunday | 00:00 | 00:00 |
| Performance of Dance (Indoors & Outdoors) | Monday to Sunday | 10:00 | 05:00 |
| Anything Similar to Live, Recorded Music or Performance of Dance (Indoors & Outdoors) | Monday to Sunday | 10:00 | 05:00 |
| Supply of Alcohol for (consumption On & Off the premises) Outdoor | Monday to Sunday | 10:00 | 05:00 |
| Late Night Refreshment (Indoors) | Monday to Sunday | 23:00 | 05:00 |
| Public Opening Times | Monday to Sunday | 00:00 | 00:00 |

- 3.3 Vanessa Sinclair has been nominated as the Designated Premises Supervisor.
- 3.4 A street map of the locality is attached as **Appendix 2**.
- 3.5 In accordance with the prescribed application criteria specified in the Licensing Act 2003, the application was served on all statutory 'responsible authorities'.

- 3.6 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 on the premises for a statutory consultation period of 28 consecutive days, starting the day after the application is complete and valid;
 - b) by the publication of a licensing notice placed in a newspaper circulating within the area of the premises, by the tenth working day of the consultation period; and
 - c) the Licensing Authority must advertise the application on its website for the duration of the consultation period.
- 3.7 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.
- 3.8 The blue notice was displayed and the newspaper notice published in accordance with the requirements of the Licensing Act 2003.
- 3.9 Any responsible authority, or other person, may submit a representation to the Licensing Authority however, only relevant representations, received during the advertised consultation period, may be considered when determining the application.

4. Representations

4.1. Representations from Responsible Authorities

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

West Midlands Fire Service

On the 12th August 2021, West Midlands Fire Service submitted a representation to the grant of the premises licence on the grounds of public safety. A copy of the representation is attached as **Appendix 3**.

Community Protection

On 23 August 2021 the Community Protection Team commented that there are no comments to make on the application in regards to licensing authority or public nuisance, however the applicants were advised to take advice from Walsall Building Control to ensure checks have taken place in terms of change of use. A copy of the response is attached as **Appendix 4**.

West Midlands Police

On 25 August 2021 the Police Licensing Officer confirmed that West Midlands Police object to the grant of the premises licence as they believe that all 4 licensing objectives will be undermined. A copy of the representation is attached as **Appendix 5**.

Children's Services

On the 26 August 2021, Children's Services responded to say they have no comments/concerns in relation to this application. A copy of the response is attached as **Appendix 6**.

Environmental Health

On the 25 August 2021, Environmental Health responded to say that they have no representations concerning this application. A copy of the response 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'**

The Licensing Authority have not received any representations from 'other persons'.

5. **Cumulative Impact Policy**

- 5.1. The premises does not fall within the councils' cumulative impact area, therefore the cumulative impact policy does not apply to this application.

6. **Walsall Council Licensing Policy**

- 6.1. **Appendix 8** is a link to Walsall Council's Statement of Licensing Policy.

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 would have to bear the costs of defending such an appeal.
- 7.3. **Legal:** Licensing Act 2003, section 10 (4) (i) states:
"Arrangements may not be made under subsection (1) or (2) for the discharge by an officer of—
(a) any function under—

(i) section 18(3) (determination of application for premises licence where representations have been made)".

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. 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.
- 7.5. 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 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 the licensing authorities licensing policy statement and the statutory guidance issued under section 182 of the Licensing Act 2003.

8. 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. The need for licensed premises 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. 14.42 The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact.

- 8.4. Paragraph 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 representations 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. Conditions should 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.

- 9.8. 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.
- 9.9. 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.

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”.

9.10. Applicants are, in particular, 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.

9.11. 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.

9.12. 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.

9.13. 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.

9.14. 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.

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

9.16. Where the applicant, responsible authority, or other persons 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.

10. Staffing issues:

None arising from this report.

11. Citizen Impact

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

12. Community Safety

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

13. Environmental Impact

13.1. Nothing arising from this report.

14. Performance and Risk Management Issues

14.1. Nothing arising from this report.

15. Equality Implications

15.1. Nothing arising from this report.

16. Consultation

16.1. Consultation/advertising is carried out in accordance with prescribed statutory regulation.

17. Associated Papers

Appendix 1 – Application.

Appendix 2 – Location Plan.

Appendix 3 – Representation from West Midlands Fire Service

Appendix 4 – Response from Community Protection

Appendix 5 – Representation from West Midlands Police

Appendix 6 – Response from Walsall Children's Services

Appendix 7 – Response from Environmental Health

Appendix 8 – Link to Statement of Licensing Policy

18. Contact Officer

Sayful Alom, Team Leader (Licensing), Sayful.alom@walsall.gov.uk