



# Licensing

24 February 2023

**Report of:** Councillor Alison Freer - Portfolio Holder for Climate, Access and Engagement

## APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR THE WHITE LION 20 NOTTINGHAM STREET MELTON MOWBRAY LE13 1NW

<b>Corporate Priority:</b>	Protect our climate and enhance our rural, natural environment
<b>Relevant Ward Member(s):</b>	CRAVEN WARD Councillor Jeanne DOUGLAS Councillor Rob BINDLOSS
<b>Date of consultation with Ward Member(s):</b>	18 January 2023
<b>Exempt Information:</b>	No

### 1 Summary

- 1.1 The purpose of this report is for the Licensing Panel to consider an application by Environmental Health to review the premises Licence held by Punch Partnerships (PTL) Limited trading as The White Lion 20 Nottingham Street Melton Mowbray LE13 1NW and to determine the application by taking such steps set out below as the Sub-Committee considers it necessary for the promotion of the licensing objectives.

### 2 Summary of Review Application

- 2.1 Environmental health received a complaint from a local resident on 17<sup>th</sup> April 2022 concerning nuisance noise from amplified music and speech from The White Lion public house. **(Appendix C)**
- 2.2 A further complaint was received on 9<sup>th</sup> July 2022 and the complainant reported experiencing intrusive music and speech until midnight and occasionally beyond midnight during the 2022 summer entertainment season. This resulted in a loss of residential amenity impairing their enjoyment of their property and prevented them from sleeping.
- 2.3 The complainant was asked to keep a noise diary. **(Appendix D)**

- 2.4 The complainant also made recordings of the noise experienced (**Appendix E**)
- 2.5 The complainant made a statement regarding the noise experienced (**Appendix F**)
- 2.6 Environmental Health Senior Technical Officer David Martschenko submitted a review application (**Appendix G**) to the Licensing Authority on 10<sup>th</sup> January 2023.
- 2.7 The Application was made under Section 51 of the Licensing Act 2003.
- 2.8 A statement (**Appendix H**) and 8 items of email correspondence between the licence holders representative and the DPS Mr Simon Brooks detailing requests for records of complaints and log of noise monitoring and nearest sensitive locations were submitted with the review application. (**Appendix I**)
- 2.9 The review application highlights the following:
- a) The Designated Premises Supervisor (DPS) Simon Brookes failed to provide compliance data when requested by a responsible authority, Environmental Health as detailed in the conditions of Licence MMA0090 Page 8 'The Prevention of Public Nuisance.
  - b) Caused a public nuisance resulting in residential disamenity have been highlighted by a resident complaint and an additional representee.
  - c) Environmental Health Are not confident that the DPS and management will rectify the situation.
  - d) Complaints from a nearby resident that the premises emitted nuisance noise during the summer of 2022.
  - e) Video evidence that there was music played outside at least 1 hour after the permitted finish time of midnight.
  - f) The DPS was present at the variation hearing on 8<sup>th</sup> October 2022 and was given a copy of the decision notice on 13<sup>th</sup> October 2020 therefore should be aware of his responsibilities under the licence.
  - g) No compliance data showing recorded observations of the noise environment from the boundary of the nearest noised sensitive property or record of complaints received and remedial action undertaken have been submitted.
- 2.10 Further submissions of screenshots from the White Lions Facebook page are submitted by Environmental Health showing that the DPS was physically involved in the music performance (**Appendix J**)

### **3 Key Factors**

#### **3.1 Reason for Committee Determination**

The Licensing Act 2003 came into force in November 2005. It passed the powers to the Local Authority to licence premises for any of the following licensable activities:

- The sale by retail of alcohol;
- The supply of alcohol by or on behalf of a club or to the order of a member of the club;
- The provision of regulated entertainment; and
- The provision of late night refreshment.

The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Each objective is of equal importance. There are no other statutory licensing objectives, so the promotion of the four objectives is a paramount consideration at all times. However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work.

- 3.2 Section 51 of the 2003 Act, allows interested persons, and responsible authorities, to make representations in favour or against the review of a premises licence. All review applications must be determined by a Licensing Committee or Sub-Committee Hearing.

## 4 Background

- 4.1 The Premises Licence MMA0090 (**Appendix A**) has been in place since 4<sup>th</sup> November 2005 and the current Designated Premises supervisor (DPS) has been responsible for the premises since 29<sup>th</sup> July 2020.

- 4.2 A variation to the premises licence MMA0090 was heard by the Licensing Sub-committee on Thursday 8<sup>th</sup> October 2020.

The Variation was sought to:

1. Extend the terminal hour for the sale of alcohol, live music, recorded music, performance of dance and late night refreshment daily until 03:00 the following day
2. Extend the opening hours to allow the premises to close daily at 03:30 the following day
3. Permit live music, recorded music, performance of dance and late night refreshment to take place both indoors and outdoors
4. Remove all existing Annex 2 and Annex 3 conditions and replace with new conditions (Annex 2 are conditions consistent with the operating schedule. Annex 3 are conditions attached after a hearing by the licensing authority)
5. Amend the licensing plan in accordance with the submitted external area plan

- 4.3 A copy of the current licence can be seen at (**Appendix A**)

- 4.4 Environmental Health submitted a representation due to concerns about the application and the noise intrusion of outside entertainment.

- 4.5 The Licensing Sub-Committee granted the application with conditions and a copy of that decision notice can be seen (**Appendix B**)

- 4.6 The relative parts of that decisions and conditions relating to Public Nuisance are:

*From 1 April to 30 September inclusive, on no more than four occasions per*

*Calendar month regulated entertainment can take place outside until 00:00hrs*

- *At all other times regulated entertainment outside shall not take place after 23:00hrs*
- *The sale of alcohol shall not take place from the outside bar after 01:00hrs*
- *Staff shall monitor customers in the external area of the premises throughout the day to ensure customers do not cause a public nuisance.*
- *A dedicated telephone number and email address for the DPS or manager will be given to any resident on request to allow complaints to be made directly at all times the premises are open.*
- *The Premises Licence Holder, DPS or nominated person shall ensure that music and speech from regulated entertainment does not exceed the 'background' noise level at the boundary of the nearest noise sensitive property at any time. For the purposes of this condition, noise from music and speech would not exceed the background noise level when it does not alter the perception of the ambient environmental noise that would prevail in the absence of the source in question.*
- *Where regulated entertainment is to take place outside after 23:00, the Premises Licence Holder, DPS or nominated person shall undertake an observation of the noise environment at the nearest noise sensitive property to ensure compliance with condition (above). The observation findings shall be documented and retained for 12 calendar months and made available to the Licensing Authority or Responsible Authorities upon request.*
- *The Premises Licence Holder, DPS or nominated person shall have full control over any sound amplification equipment at all times.*
- *A record of complaints shall be maintained to record details of any Complaints received. The information to be recorded shall include the date and time of complaint and subsequent remedial action undertaken and (where disclosed) the complainant's name and location. The record of complaints shall be kept for 12 months from the date of the last record made and shall be available to the Licensing Authority or Responsible Authorities upon request.*

## **5 Representations**

### **5.1 Representations – Responsible authorities**

- 5.1.1 Notifications of this review application were sent to all the responsible authorities as required by the Licensing Act 2003
- 5.1.2 We have received no representations from any other authority than those listed below.
- 5.1.3 Leicestershire Police cover the responsibility for this premises and have made no comment as they do not normally deal with public nuisance issues and they are satisfied with the general running of the establishment.
- 5.1.4 C Millward on behalf of the Licensing authority

The representation received from Mr Millward (**Appendix K**) relates to observations conducted in Melton Town on the morning of Sunday 18<sup>th</sup> September 2022 and relates to Prevention of Public Nuisance and includes video evidence showing the noise levels at various locations. The recordings were made at various times between 00.13 to 00.59

- It should be noted that these recordings of music being played in the open area at the rear of the property were after the permitted hours of 00.00.
- The recordings are produced (**Appendix L**)
- A list has been made to accompany them (**Appendix M**)

## 5.2 Representations – Other

- 5.2.1 There have been 4 other representations made during the 28 day consultation period and 4 emails in support of the White Lion but these were deemed not to be relevant to the 4 Licensing objectives and have been forwarded to the licence holder's solicitor as testimonials.
- 5.2.2 Another email came in on the morning of 8<sup>th</sup> February outside the consultation period, this was also deemed to not relate to the licensing objectives and rejected. This was also forwarded to the licence holder's solicitor.
- 5.2.3 A further representation was received after the 28 day consultation period and was rejected as it was out of time.
- 5.2.4 Representation from initial complainant K Lambert (**Appendix N**) concerning the noise levels and how it affects their life.
- 5.2.5 Representation from member of the public E Hull (**Appendix O**) concerning the noise levels and their attempts to complain to staff at the venue.
- 5.2.6 Representation from Member of the public S Bunker (**Appendix P**) stating that they can't hear night life from the White Lion but do hear noise from the Town centre.
- 5.2.7 Representation from initial complainant J Drury (**Appendix Q**) stating that the White Lion is the least of their concerns and they hear music from lots of other venues. They go on to say that they have learnt to live with noise as they choose to live in the town centre.
- 5.3 All representations have to meet basic legal and administrative requirements namely must not be frivolous or vexatious and be in relation to the at least one of the 4 licensing objectives. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing. All the representations in this report have been considered by the Licensing Officer Simon Greensmith and determined to have met the requirements of the Licensing Act 2003.

## 6 Main Considerations

- 6.1 The Sub Committee may, having regard to the application for a review and any relevant representations, take such of the following steps as it considers necessary for the promotion of the licensing objectives:
- 6.2 Modify the licence times or conditions.

- 6.3 Exclude a licensable activity from the licence.
- 6.4 Remove the Designated Premises Supervisor.
- 6.5 Suspend the licence for a period of not more than three months.
- 6.6 Revoke the licence.
- 6.7 Take no action

## **7 Statutory Guidance and Statement of Licensing Policy**

7.1.1 In addition to the requirement that any decision of the Licensing Authority must be in accordance with the licensing objectives, the Sub-Committee are also obliged to have regard to Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.

### **7.2 Guidance:**

7.2.1 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf)

7.2.2 Officers consider that the following paragraphs may have a bearing upon the application;

1.1 to 1.5 (the licensing objectives summary),

2.15 to 2.21 (public nuisance),

3.1 to 3.2 (summary of licensable activities),

3.11 (regulated entertainment),

8.35 to 8.37 Beer gardens or other outdoor spaces

8.41 to 8.49 (steps to promote licensing objectives),

8.69 to 8.73 (licensing conditions),

8.80 (advertising applications),

Section 9 (determining applications) in particular 9.11 to 9.12 (the role of responsible authorities – each responsible authority being an expert in their respective field) and 9.31 to 9.44 (hearings),

10.1 to 10.10 (conditions attached to premises licences)

11.1 to 11.23 Reviews

14.1 to 14.3 (local statement of licensing policy)

16.36 to 16.41 Live Music or Recorded Music

### **7.3 Policy:**

7.3.1 In making any decision, Members must also have regard to the Council's own Statement of Licensing Policy and the Home Office statutory guidance issued under section 182 of the Licensing Act 2003 both of which can be found online at:

<https://www.melton.gov.uk/media/hbjawxhz/statement-of-licensing-policy-final-2017.pdf>

This includes:

- (i) Section 2.3 & 2.4 (Balance) – considers the needs of the applicants and the residents.
- (ii) Section 2.5 (Extent of Control) – considers what matters are in the control of the applicant.
- (iii) Section 7 (Licensing Authority (Responsible Authority Role)) – considers how and when the licensing team may be involved in placing representations.
- (iv) Section 9 (Promotion of the Licensing Objective) – considers who the applicant may wish to discuss their application with and things the application should address.
- (v) Section 16 (Standardised Conditions) – considers both mandatory conditions and suggests model conditions the applicant may use.

7.3.2 The review application when submitted, complied with our policy and met the statutory requirements in the information provided on the documents.

7.4 The Sub-Committee is reminded of its responsibilities under the Crime and Disorder Act 1998 (to co-operate in the reduction of crime and disorder in the Melton Borough) and the Human Rights Act (which guarantees the right to a fair hearing for all parties in the determination of their civil rights, and also provides for the protection of property, which may include licences in existence, and the protection of private and family life) when considering the fair balance between the interests of the all parties to this Hearing. Any decision taken by the Sub-Committee must be necessary and proportionate to the objectives being pursued.

7.5 Members are reminded that whenever they make a decision under the Licensing Act 2003, they have a duty to act with a view to promoting the licensing objectives:

- Prevention of crime and disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

7.6 When considering any representations, only those issues relating to the four licensing objectives should be considered and appropriate weight given to the importance and relevance of each representation.

7.7 Members should note that the applicant or persons making representations have the right of appeal against the decision made by the Sub-Committee.

7.8 The application should be considered on its merits and any decision should be taken in light of all evidence and representations put before the subcommittee and be reasonable and proportionate.

## **8 Consultation**

8.1 The consultation period commenced on 11<sup>th</sup> January 2023 for 28 days ending on 7<sup>th</sup> February 2023. During this time all the statutory consultees were provided with a copy of the review application for their consideration.

8.2 The review application was advertised by blue notices placed on or near the premises and checked regularly to ensure compliance.

- 8.3 A notice was posted on the Council's website and noticeboard.
- 8.4 During this period, 5 representations were received as detailed at Section 5 of the report and listed in **Appendix K – Q**.
- 8.5 The Licence Holder provided evidence for consideration in the form of 5 emails showing support for live music events at The White Lion. These do not form a representation as they do not relate to one of the four licensing objectives (**Appendix R**).

## **9 Next Steps – Implementation and Communication**

- 9.1 Once a decision is made by the Sub-Committee, all parties will be notified of the decision within 5 working days.
- 9.2 The Sub-Committee should note that the Licence holder does have the right of appeal within 21 days of being notified of the decision.

## **10 Financial Implications**

- 10.1 There are no financial or other resource implications.

**Financial Implications reviewed by: Assistant Director for Resources**

## **11 Legal and Governance Implications**

- 11.1 Section 51 of the Licensing Act 2003 provides that:

(1) Where a premises licence has effect, a responsible authority or any other person may apply to the relevant licensing authority for a review of the licence.

- 11.2 Section 52 of the Licensing Act 2003 provides that where the licensing authority received an application made in accordance with Section 51, the authority must hold a hearing to consider the application and any relevant representations and may take the steps set out below as it considers necessary for the promotion of the licensing objectives:

- modify the conditions of the licence;
- exclude a licensable activity from the scope of the licence;
- remove the designated premises supervisor;
- suspend the licence for a period not exceeding three months;
- revoke the licence;

- 11.3 Chapter 2 Part 8 (1.6) (Licensing Committee Functions and Procedure Rules) of the Council's Constitution requires that applications for review of premises licences or club premises certificates must be referred to Licensing Sub Committee.

- 11.4 The Council is responsible for carrying out the licensing function under the Licensing Act 2003. The Act regulates the sale of alcohol, the provision of entertainment, the showing of film and late-night refreshment.

- 11.5 The Council has delegated its licensing function to its Licensing Committee, Sub Committees and Licensing Officers referred collectively to as the "Licensing Authority".

- 11.6 Any decision must be taken following consideration of the representations received with a view to promoting the licensing objectives which are:

- Prevention of crime and disorder



- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

11.7 The Licensing Act 2003, allows interested persons, and responsible authorities to make representations about any review application to an existing licence.

11.8 Any of the parties involved may, if they are unhappy with the outcome of this hearing, appeal to the Magistrates' Court within 21 days of being notified of the decision.

**Legal Implications reviewed by: Solicitor 16.02.23**

## **12 Equality and Safeguarding Implications**

12.1 There are no equality implications arising from this report.

## **13 Community Safety Implications**

13.1 The members of the Sub-committee are reminded to follow the guidance at 4.5.1 above

## **14 Environmental and Climate Change Implications**

14.1 The late-night noise may have affected other residents in the vicinity of the premises who may have not come forward.

## **15 Other Implications (where significant)**

15.1 The original complainant has indicated the risks and detriment to their health and wellbeing and right to a family life.

## **16 Background Papers**

16.1 None

## **17 Appendices**

- A) Premises Licence MMA0090
- B) Decision notice Licensing Sub-Committee 08/10/2020
- C) Complaint from Kaisey Lambert
- D) Noise diary from Kaisey Lambert
- E) Noise recordings by Kaisey Lambert – available on request
- F) Statement from Kaisey Lambert
- G) Review application from David Martschenko (EH)
- H) Statement from David Martschenko (EH)
- I) Copies of email correspondence (EH) to Licence holder's representative
- J) Screenshots of White Lion Facebook pages
- K) Representation from Licensing (Chris Millward)
- L) Recordings taken by Chris Millward – available on request
- M) List of recordings from C Millward
- N) Representation from K Lambert

- O) Representation from E Hull
- P) Representation from S Bunker
- Q) Representation from J Drury
- R) Testimonials

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