

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

LICENSING SUB COMMITTEE – WEDNESDAY 14 AUGUST 2019

Title of report	APPLICATION FOR THE REVIEW OF A PREMISES LICENCE
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Purpose of report	To determine an application for a review of a premises licence in respect of premises trading as The Chequered Flag, located at 32 Borough Street, Castle Donington, Derby, DE74 2LA. This report outlines the application and also highlights the licensing objectives, the relevant parts of Government guidance and the pertinent sections of the Licensing Authority's licensing policy.
Council Priorities	Homes and Communities
Implications: Financial/Staff Link to relevant CAT Risk Management Equalities Impact Assessment Human Rights	<p>Implications arising from an appeal made to the Magistrates Court by anyone aggrieved by the decision of the Sub-Committee.</p> <p>N/A</p> <p>The risk of cost arising from an appeal against the decision of the Committee. In any event and in order to mitigate these risks, the Committee should give clear reasons for its decisions and any such reasons would need to be substantiated in Court.</p> <p>Equality Impact Assessment already undertaken, issues identified actioned.</p> <p>Article 1 of Protocol 1 of the European Convention of Human Rights provides that everyone is entitled to the peaceful enjoyment of his possessions, except in the public interest and subject to the conditions provided for by law.</p>

Transformational Government	Not applicable.
Consultees	Leicestershire Fire and Rescue Service, The Home Office, Trading Standards, Health and Safety, Environmental Protection, Licensing Authority, Planning, Health Authority, the Police and members of the public/local businesses by way of notice at the premises, on the Council's website and at the Council Offices, Coalville.
Background papers	Guidance issued under Section 182 of the Licensing Act 2003 Statement of Licensing Policy – Issue 7
Recommendations	THAT THE SUB-COMMITTEE DETERMINE THE APPLICATION.

1. BACKGROUND

- 1.1 The premises is currently a micro pub/bar selling alcohol for consumption on and off the premises and it is located at 32 Borough Street, Castle Donington and currently holds a premises licence issued under the Licensing Act 2003 on 17 February 2014. A copy of the premises licence is attached as **Appendix 1**.
- 1.2 A map showing the location of the premises is attached as **Appendix 2**.
- 1.3 An application for the review of premises licence was received from Leicestershire Fire and Rescue Service on 25 June 2019. A copy of the application is attached as **Appendix 3**. In support of this application, a timeline history was enclosed which is attached as **Appendix 4**.
- 1.4 The review of the premises licence is detailed as follows:

There is evidence to show that the premises in question is not supporting the following licensing objectives: Public Safety.

This is because:

The Fire Authority was not able to ascertain if the Responsible Person, Mr Robert Anthony Sandham, is complying with his duties under the current fire safety legislation and namely, The Regulatory Reform (Fire Safety) Order 2005 - aka The FSO 2005-, to take 'general fire precautions' and hence, if the premises are safe from fire for all relevant persons.

The meaning of 'general fire precautions' as defined under The FSO 2005 are as follow:

- (a) Measures to reduce the risk of fire and the risk of the spread of fire on the premises.
- (b) Measures in relation to the means of escape from the premises.
- (c) Measures for securing that, at all material times, the means of escape can be safely and effectively used.

(d) Measures in relation to the means for firefighting on the premises

(e) Measures in relation to the means for detecting fire on the premises and giving warning in case of fire on the premises; and

(f) Measures in relation to the arrangements for action to be taken in the event of a fire on the premises, including:

(1) Measures relating to the instructions and training of employees; and

(2) Measures to mitigate the effects of fire

More specifically, the Responsible Person, Mr Robert Anthony Sandham, has:

1) failed to keep the communal rear alley way (which is a designated means of escape route) cleared of any combustible items and by obstructing it with large quantities of beer kegs barrels and refuse sacks. This in itself represents a Health & Safety hazards for all relevant people who may have to use the said route. This is also an offence under Article 14 of the current fire safety legislation, The FSO 2005, as people (guests and staff members) would not be able to quickly and safely evacuate in the event of a fire in the premises.

2) failed TWICE to attend in person for Fire Safety Audits inspection visits arranged by the Fire Authority on 20/05/19 and 05/06/19 despite having been notified by emails and letters.

3) failed to reply to any emails, letters, and voicemails from the Fire Authority.

4) ignored to follow fire safety advice given to him by The Fire Authority (verbally on 05/06/18 and in writing on 06/06/18) and in order to remedy fire safety issues raised from fire safety concerns received from members of the public (e.g. blocked rear means of escape route by beer barrels kegs and refuse sacks).

5) failed to comply as a legal requirement under The FSO 2005, with an Article 27 Information Request Letter sent to him by The Fire Authority on 06/06/19 and thereby by his failure, considered as committing a criminal offence by Obstructing an inspector under Article 32(2)(d) of The FSO 2005 in the exercise or performance of his powers or duties.

6) Failed to provide when requested, all documentation consisting of:

(i) Fire Risk Assessment

(ii) Certification from competent persons showing the fire safety provisions that may be present within the building (e.g. emergency lighting system, fire alarm system, fire extinguishers,..) are maintained in accordance with relevant guidance.

(iii) Maintenance records showing, where applicable, regular testing of the aforementioned fire safety provisions (e.g. Fire Log Book).

(iv) Evidence of any staff training having been delivered (e.g. emergency procedures, fire extinguisher training,...)

2.0 REPRESENTATIONS

- 2.1 The application was received online by the licensing department. The applicant is then required to serve each of the responsible authorities, The Home Office, Trading Standards, Health and Safety, Environmental Protection, the Licensing Authority, Planning, the Health Authority and the Police. Officers are satisfied that all parties were served as required.
- 2.2 The licensing authority must advertise the review application and invite representations from other responsible authorities and any other person. The review application was displayed at the Council offices and on the Council's website. The notices were displayed in the Chequered Flag window and on a lamppost outside the premises on 26 June 2019. On 2 July 2019, it was observed that the notice had been removed from the Chequered Flag's window. However the notice remained on the lamp post and was checked on 2 July, 5 July, 10 July and on 17 July, therefore officers are satisfied that the premises licence review was advertised as required.
- 2.3 There were two representations from the responsible authorities.
- 2.4 One representation was received from the Environmental Protection Planning team on the grounds of public safety, the prevention of public nuisance and the prevention of crime and disorder. The representation stated concerns regarding seating and tables being placed on the public highway for which there is no planning permission, which has created a change of use of the highway and also that Mr Sandham fails to communicate and ignores officer advice. A copy of the representation is attached as **Appendix 5**. Documents in support of this representation including planning permission, premises plans and an ordinance survey map are attached as **Appendix 6**.
- 2.5 A second representation was received from Community Services/Environmental Protection on the grounds of public safety, the prevention of public nuisance and the prevention of crime and disorder. The representation stated concerns regarding the rear fire exit being partially blocked with barrels making escape from the premises difficult in case of fire, failing to produce waste transfer notes, public nuisance through noise emanating from the area outside the front of the premises and that Mr Sandham fails to communicate with officers. A copy of the representation is attached as **Appendix 7**. Photographs in support of this representation, with regard to the safety of the rear fire exit are attached as **Appendix 8**.
- 2.6 Other persons/organisations are able to make representations within 28 days of the display of the notice of the application to the licensing authority. There were no representations from other parties.

3.0 STATUTORY GUIDANCE

- 3.1 In making its decision, the Sub-Committee is obliged to have regard to Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003. All Licensing Committee members have been provided with a full copy of the guidance document. Officers consider that paragraphs 1.1 to 1.5, 1.13, 2.7 to 2.10, 8.1 to 8.7, 8.23 to 8.25, 8.80, 9.13 to 9.19, 9.42 to 9.44, 10.1 to 10.5, 10.8 to 10.9, 11.1 to 11.3, 11.5 to 11.23, 13.1 to 13.12, may have a bearing upon the application.

4.0 STATEMENT OF LICENSING POLICY

4.1 In making its decision, the Sub-Committee is obliged to have regard to the Council's Statement of Licensing Policy (issue 7). Officers consider that paragraphs 2.1 to 2.5, 2.7, 3.0, 5.1 to 5.4, 16.0, 22.0, 23.0, 25.0 and 26.0 may have a bearing upon the application.

5.0 OBSERVATIONS

5.1 The steps that the Licensing Authority must can take are:

- the modification of the conditions of the premises licence;
- the exclusion of the sale of alcohol by retail from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence not exceeding 3 months
- the revocation of the licence

5.2 The Committee is obliged to determine this review with a view to promoting the licensing objectives, which are:

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

5.3 An appeal may be made to the Magistrates court within 21 days of the licence holder being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officers of police and/or any other person who have made relevant representations

5.4 The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the disposal of the appeal.