

Report of	Meeting	Date
Director of Public Protection, Street Scene and Community	Licensing Act 2003 Licensing Sub - Committee	10 March 2015

## **APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003, FOR THE SIRLOIN INN.**

### **PURPOSE OF REPORT**

- To enable Members to determine an application received from Black Napkins Northwest Ltd for a variation of the premises licence for The Sirloin Inn, Station Road, Hoghton, PR5 0DD

### **RECOMMENDATION(S)**

- Members are recommended to consider the application and any representations made by relevant authorities and / or other persons and after considering those representations determine the application for the purpose of the premises licence for The Sirloin Inn.

### **EXECUTIVE SUMMARY OF REPORT**

- On 14 January 2015 the Council has received an application from Black Napkins Northwest Ltd made under Section 34 of the Licensing Act 2003 for the Variation of the Premises Licence for The Sirloin Inn, the application is attached as **Appendix 1**. The premises currently benefits from a premises licence PLA 0307, the current licence is attached as **Appendix 2**. The application seeks to increase the licensable hours, the scope of regulated entertainment provision and to include the licensable activities to both inside and outside the premises, to simultaneously remove conditions attached to the existing premises licence operating schedule and propose new conditions to the operating schedule of the premise licence to promote the Licensing objectives. The application has received a number (24) of representations from other persons, Lancashire Constabulary and the Council' Environmental Health Regulatory Officer; the representations are appended to the report at **Appendix 3**.

<b>Confidential report</b> Please bold as appropriate	Yes	<b>No</b>
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### **CORPORATE PRIORITIES**

- This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all	X	A strong local economy	X
Clean, safe and healthy communities	X	An ambitious council that does more to meet the needs of residents and the local area	

## BACKGROUND

5. The premises have a long history as a public house offering a range of facilities including the provision of alcohol, regulated entertainment and food. The current premises licence was determined by Members of the Councils Licensing Sub-Committee on the 1<sup>st</sup> November 2005. That application was made under the transitional arrangements available at that time following the introduction of the Licensing Act 2003, that application received a number of representations from residents local to the premises and from Lancashire Constabulary. The representations received by Lancashire Constabulary were withdrawn following mediation between the applicant and the Police prior to the hearing. The report and the committee decision in relation to that hearing is attached as **Appendix 4**.

6. The current application seeks to vary the existing licensable provisions to ;

Provision of Plays; Monday to Sunday 08.00 – 23.30 indoors and outdoors.

Provision of Films; Monday to Sunday 08.00 – 23.30 indoors and outdoors.

Provision of Boxing or Wrestling Entertainment; Monday to Sunday 08.00 – 23.30 indoors and outdoors.

Provision of Live Music; Monday to Sunday 08.00 – 23.30 indoors and outdoors.

Provision of Recorded Music; Monday to Sunday 08.00 – 23.30 indoors and outdoors.

Provision of Performances of Dance; Monday to Sunday 08.00 – 23.30 indoors and outdoors.

Provision of Anything of a Similar Description to Live Music Recorded Music or Performance of Dance; Monday to Sunday 08.00 – 23.30 indoors and outdoors.

Provision of Late Night Refreshment; Monday to Sunday 08.00 – 23.30 indoors and outdoors.

Supply of Alcohol; Monday to Sunday 00.00 - 24.00. On and Off the premises.

Hours Premises are Open to the Public; Monday to Sunday 00.00 - 24.00.

The application has made reference to each of the above proposed regulated activities providing further details of how each of the activities will be managed were the activity is conducted outside, Members attention is directed to the application at appendix 1 for the details in relation to the specific activity. Similarly, the application proposes to extend the licensable activity as listed outside until midnight on Good Friday, the day prior to a bank holiday and any other days of significance or national importance.

The application seeks to reduce the present terminal time for indoor regulated entertainment from midnight to 23.30 hrs.

The application seeks to amend the existing plan of the premises to include the whole of the area of the premises; this is represented as plan B to the application.

The application seeks to amend the operating schedule for the premises licence by removing conditions attached to the operating schedule, however at the time of writing the report it was not possible to identify which of the conditions attached to the operating schedule are intended to be removed. Members are advised to clarify with the applicant at the earliest opportunity which conditions they are proposing to remove.

The applicant has proposed to include the following provisions to address the Licensing Objectives;

### **The prevention of crime and disorder**

1. Installation of digital CCTV system with cameras both internally and externally. The system to be recording 24 hours a day 7 days a week, to be fully operated and, maintained to the satisfaction of Lancashire Constabulary.
2. Ensure there is one member of staff on duty at all times when the premises are trading who can operate and download images from the CCTV system. These images to be made available on reasonable request and in accordance with current provisions of the Data protection Act from any responsible authority.
3. The premises will operate an age challenge policy 25
4. The premises will have a written Drugs Policy.

### **Public safety**

1. Staff will make regular checks of internal and external areas to ensure any unused glasses and bottles are collected.
2. Staff including door staff will be trained and have knowledge of fire precaution measures, illegal sales of alcohol, first aid and the drugs policy.
3. All staff training will be recorded and these records made available for inspection on request by any responsible authority. (d) Door staff requirements on trading nights will be determined by the Premises Licence holder/DPS on a risk assessed basis and such risk assessment details/decisions will be recorded in writing to the satisfaction of Lancashire Constabulary.

### **The prevention of public nuisance.**

1. All Windows and doors will be kept closed whenever regulated entertainment is taking place after 22:00 hours.
2. A noise assessment will be conducted at not less than one meter to the nearest noise sensitive location at regular intervals (every hour) during the provision of any regulated entertainment, and a nominated member of staff will record both positive and negative results and any action taken to limit any noise will be recorded in document form and this should be made available for inspection at the request of any responsible authority.
3. Signage will be displayed on the premises asking customers to leave the premises quietly.
4. All outside areas will be prohibited from use for the purposes of any regulated activity from 23.00 hours until 9.00hrs. ( Members will note that the times contained within this condition contradict those times applied for at other parts of the application, Members may wish to seek clarification on this point at the hearing).
5. The Premises Licence Holder will implement a daybook to be maintained and managed to the satisfaction of Lancashire Constabulary and the Local Authority.

### **The protection of children from harm**

1. The premises will operate a challenge Policy which states that any person who appears to be under at least 25 years old will be asked to produce a recognized and approved form of I.D.
2. The Premises will display signage advertising this Challenge 25 Policy.
3. Any persons employed on the premises who are under the age of 18 shall be employed in accordance of the statutory regulations relating to the employment of young person's.
4. A record will be kept of any challenges under the Challenge policy.

Officer believe it is appropriate at this time and to assist Members (in view of the application received) to amend the existing conditions attached to the present Premises Licence PLA0307, by removing non-relevant conditions, the removed conditions have been identified as either redundant because other primary legislation now takes president or the conditions

are unenforceable. The following conditions are those that will remain relevant to the Premises licence and include;

Annex 1. Mandatory Conditions, all mandatory conditions remain unchanged.

Annex 2.

### **Prevention of Crime and Disorder**

*Incident logbooks are used to record any accidents or incidents of non-service.*

*An operational drugs policy is in force and the premises is part of the Pubwatch scheme in the local area.*

*Those who appear to be below the age of 21 must provide photographic evidence to prove they are over 18 in order to be served alcohol.*

### **Public Safety**

*The designated premises supervisor is a fully qualified first aider.*

*Pre-opening safety checks are carried out daily.*

### **Prevention of Public Nuisance**

*The premises are located in a residential area therefore all doors are kept closed, except for access to the public, in order to reduce noise pollution.*

*There are notices inside the premises requesting that customers leave in an orderly manner.*

*Local taxi firms will be informed of any changes in opening hours.*

*Recorded music may be played from 00.00 until close provided that it is played at a reduced level, as not to disturb neighbours i.e. music is inaudible to the nearest noise sensitive location.*

### **Protection of Children From Harm**

*Children must be accompanied by an adult at all times.*

## **Annex 3. CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY**

### *Additional conditions*

- 1) All external doors and windows shall be kept closed when regulated entertainment is being provided except in the event of an emergency.
- 2) The licence holder or his representative shall conduct regular assessments of the noise coming from the premises on every occasion the premises is used for regulated entertainment and shall take steps to reduce the level of noise where it is likely to cause a disturbance to local residents. A written record shall be made of those assessments in the logbook kept for that purpose and shall include, the time and date of the checks, the person making them and the results including any remedial action.
- 3) There shall be placed at all exits from the premises and in the car park, in a place where they can be seen and easily read by the public, notices requiring customers to leave the premises and the area quietly. (Note this may also include a reference to vehicles.)
- 4) No outside areas(i.e. decking area) designated for the consumption of alcohol shall be used after 22.00 hours and all glasses and bottles should be removed at this time and a physical barrier across the entrance to emphasise the closure.

The times the current licence authorises the carrying out of licensable activities are;

Performance of Live Music (Indoors)

Monday to Sunday 11:00 - 00:00

Non Standard Timings:

Christmas Eve, Boxing Day, New Year's Eve 11.00 until 01.00

12 additional days provided written notice is given seven days in advance to Police and Licensing Authority.

Performance of Recorded Music (Indoors)

Monday to Sunday 11:00 - 00:00

Non Standard Timings:

Christmas Eve, Boxing Day, New Year's Eve 11.00 until 01.00. 12 additional days provided written notice is given seven days in advance to Police and Licensing Authority.

Entertainment Facilities - Dancing (Indoors)

Monday to Sunday 11:00 - 00:00

Non Standard Timings:

Christmas Eve, Boxing Day, New Year's Eve 11.00 until 01.00. 12 additional days provided written notice is given seven days in advance to Police and Licensing Authority.

Late Night Refreshment (Indoors)

Sunday 23:00 - 23:30

Monday to Thursday 23:00 - 00:30

Friday to Saturday 23:00 - 01:30

The sale by Retail of Alcohol (On and off the premises)

Sunday 11:00 - 23:30

Monday to Thursday 11:00 - 00:30

Friday to Saturday 11:00 - 01:30

Non Standard Timings:

New Year's Eve 11.00 - 01.30.

#### THE OPENING HOURS OF THE PREMISES

Sunday 11:00-23:30

Monday to Thursday 11:00-01:00

Friday to Saturday 11:00-02:00

Non Standard Timings:

New Year's Eve 11.00 - 02.00.

7. The Council's Environmental Health Officer has made the following comments with regards to noise complaints made towards the premises;

Neil Kirkham

Environmental Health Officer

In respect of the application to vary the premises licence Ref. No: 15/00040/LAPLA for The Sirloin Inn, Station Road, Hoghton, Preston, PR5 0DD, this department would like to make a representation following the receipt of 5 separate noise nuisance complaints from residents between the period of July and September 2014. The initial complaint pertained to noise from

an event on the rear car park and the remainder from noise emitting from the premises, including the external areas on an alleged regular basis.

All complaints were investigated under Statutory Noise Nuisance procedures. To date the Council has been unable to gather sufficient evidence to either substantiate or disprove a statutory noise nuisance. The current application to licence the outdoor areas and allow live and recorded music and other entertainment both inside the premises and outdoor areas to 23.30 each night, has in my opinion the potential to create a noise nuisance to neighbouring properties and therefore I object to the application in respect of the licensing objective The Prevention of Public Nuisance.

#### Representations received from Lancashire Constabulary

The police have concerns that the granting of the proposed variations would undermine the licensing objectives of the Prevention of Crime and Disorder and the Prevention of Public Nuisance.

In essence the police concerns can be grouped into three distinct categories, these being;

- 1) The hours being sought for certain licensable activity
- 2) The extension of the licensed area and the provision of activities outside the premises
- 3) The steps outlined within the operating schedule to promote the licensing objectives.

Lancashire Constabulary have provided a detailed representation which is attached as **Appendix 3**, Members will note that the Constabulary have put forward at appendix 2 to the representation a list of favoured conditions to be attached to the Premises Licence for The Sirloin Inn. Members are advised that it would only be appropriate to attach those licensing conditions that it believes are appropriate to promote the licensing objectives, and it would only be appropriate to affect any change to the existing licensing conditions to the premises licence operating schedule were a variation to the licensable activities has been granted.

Officer has considered the Constabulary representations and believes it is presented with an emphasis on presumption

Members are urged to consider the representations made by Lancashire Constabulary in detail, it would be appropriate to clarify with any officer present representing Lancashire Constabulary the evidential value of the representation received and determine the appropriate weight to that evidence in light of the application received and the licensing conditions presented at appendix 2 of the representations.

#### 8. Representation received from interested parties.

The Council have received 22 representations from interested parties.

The issues raised by the representations relate to the licensing objective for;

The Prevention of Crime and Disorder,  
The Prevention of Public Nuisance,  
Public Safety.

Where relevant representations have been received by the council in a timely manner the persons making representation have been invited to attend today's hearing by the prescribed statutory notice, Members will be advised at the hearing of the number of replies received indicating their intention to attend or not to attend the hearing and whether any remedies

have been received to the proposed application. In view of the number of representations received the Lead Licensing & Enforcement Officer took the decision to not engage in the mediation process with any of those making representation.

Members attention is drawn to the representation's received, consideration should only be given to those statements that have been made that would ordinarily be affected by the Licensing Objectives.

All parties to this application have been invited to attend the hearing under the Licensing Act 2003 (Hearing) Regulations 2005, to make representation. The representations received are attached as **Appendix 3**.

The Committee has the following options:

- (i) to reject the application in part or whole
- (ii) to grant the application
- (iii) to modify the conditions of the licence should any part of the application be granted

## **POLICY AND LEGAL CONSIDERATIONS**

9. Section 4 of the Licensing Act 2003 provides that a Licensing Authority must have regard to its Statement of Licensing Policy, the guidance issued by the Secretary of state under section 182 of the Licensing Act 2003, the most recent version of which in paragraphs 15.10 onwards addresses the provisions of the Live Music Act 2012.". The Live Music Act 2012."is provided as a background document.

As members will be aware the four licensing objectives are as follows:

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

10. The Licensing Authority shall determine the application, having had considered the representations that have been made, and having regard to its Statement of Licensing Policy and to the guidance issued by the Secretary of State under section 182 of the Act. Section 35 Licensing Act 2003 is the authority the Licensing – sub - committee can rely upon with regards to this matter, which is reproduced below.

Section 35, Determination of application under Section 34.

(1) This section applies where the relevant licensing authority—

- (a) receives an application, made in accordance with [section 34](#), to vary a premises licence, and
- (b) is satisfied that the applicant has complied with any requirement imposed on him by virtue of [subsection \(5\)](#) of that section.

(2) Subject to subsection (3) and [section 36\(6\)](#), the authority must grant the application.

(3) Where relevant representations are made, the authority must—

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers [appropriate] <sup>1</sup> for the promotion of the licensing objectives.

(4) The steps are—

(a) to modify the conditions of the licence;

(b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

(5) In this section “*relevant representations*” means representations which -

(a) are about the likely effect of the grant of the application on the promotion of the licensing objectives, and

(b) meet the requirements of subsection (6).

(6) The requirements are—

(a) that the representations are made by [a responsible authority or other person] <sup>2</sup> within the period prescribed under [section 17\(5\)\(c\)](#) by virtue of [section 34\(5\)](#),

(b) that they have not been withdrawn, and

(c) in the case of representations made by [a person who is not a responsible authority] <sup>3</sup>, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(7) Subsections (2) and (3) are subject to [\[sections 19 to 21\]](#) <sup>4</sup> (which require certain conditions to be included in premises licences).

11. Members must have regard to the Statement of Licensing Policy when determining this application. In particular, member’s attention is drawn to the following paragraphs:
12. Paragraph 1.3 The policy provides guidance on the general approach the Council, as Licensing Authority, within the meaning of the Act, will take in terms of licensing, However, each application will be considered separately, on its individual merits.
13. Paragraph 1.4 The Statement of Licensing Policy sets out how the licensing objectives will be achieved and to secure the safety and amenity of residential communities whilst facilitating a sustainable entertainment and cultural industry. The Policy recognises both the needs of residents for a safe and healthy environment in which to live and work and the importance of safe and well run entertainment premises to the local economy. Balancing these interests will not always be straightforward and will be guided by the four licensing objectives.
14. Paragraph 1.5 This policy does not seek to undermine the right of any individual to apply under the Act for a variety of permissions and as stated above each application will be considered on its individual merits. Nor does the Policy seek to override the right of a person to make representations on an application or seek a review of a licence or



certificate. However, the Council in adopting this policy is indicating that a wide range of considerations will be taken into account.

15. Paragraph 2.2 each of the licensing objectives are of equal importance with these objectives.
16. Paragraph 2.3 each of the licensing objectives is of equal importance for the purposes of this policy.
17. Paragraph 2.4 this policy statement is designed to deal with matters within the control of the licensee. It focuses on the premises in which each business is carried on and the effect that has on members of the public living, working or engaged in normal activity in the vicinity.
18. Paragraph 2.5 Licensing law is not envisaged by the Licensing Authority as a mechanism to control anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises concerned. Therefore any terms and conditions imposed will be focused on matters within the control of individual Licensees and others granted relevant permissions. These matters will centre on the premises and places used for licensable activities and in the vicinity of the places.
19. Paragraph 2.6 The Licensing Authority considers that every holder of a licence, certificate or permission and designated premises supervisor is responsible for minimising the impact of their activities and anti-social behaviour by their customers within the vicinity of their premises.
20. Paragraph 5.3 the policy will not fix the hours during which alcohol can be sold. The Licensing Authority considers that stricter controls regarding noise nuisance may be necessary in more densely populated areas. The grant of a licence will be dependent on the impact of an activity on the licensing objectives.

## **CRIME AND DISORDER**

21. Paragraph 6.1 Licensed premises, especially those offering late night entertainment, alcohol and refreshment can be a source of crime and disorder problems.
22. Paragraph 6.2 The Council is committed to reducing crime and disorder across the Borough through its statutory duty under the Crime and Disorder Act 1998 and the Community Safety Strategy. Statistics from the Community Safety Partnership regarding Crime and Disorder in the Licensing Authority .
23. Paragraph 6.3 The Community Safety Partnership will regularly monitor and review crime statistics within the Borough and their association with alcohol and provide reports to the Licensing Authority where appropriate. The Licensing Authority will give due consideration to any submissions made concerning the impact on crime and disorder of alcohol related problems. The Council may review this Policy where it considers it appropriate to do so.
24. Paragraph 6.4 The Council will have particular regard to the likely impact on licensing of related crime and disorder in the Borough particularly when considering the location, impact and the operation and management of all proposed licensed premises and applications for variations.
25. Paragraph 6.5 the promotion of the crime and disorder-licensing objective, places a responsibility on licence holders to try and achieve this objective. Applicants will therefore be required to address, in their operating schedules, where appropriate, those measures that have been identified and will be implemented and/ or maintained to reduce or prevent crime and disorder in the vicinity of their premises. The Licensing Authority considers that best practice will be exemplified by the night safe initiative and would recommend that licence holders join this initiative.

26. Paragraph 6.6 Where relevant representations are received on the crime and disorder objective, the Licensing Authority may have regard to the following where relevant: (though this is not an exhaustive list):
- Crime prevention measures.
  - Physical security features installed in the premises, (this may include CCTV both inside and outside the premises, where alcohol is stored in relation to off licences, the use of toughened drinking glasses).
  - Weapon detection and search facilities.
  - procedures for risk assessing promotions and events such as 'happy hours', drinks promotions, for the potential to cause crime and disorder, and the plans to minimising such risks.
  - Adoption of best practice guidance in relation to safer clubbing guide.
  - measures to prevent the use or supply of illegal drugs including search and entry policies.
  - Employment of licensed door supervisors.
  - Participation in other appropriate schemes eg pub watch scheme.
  - measures to be taken for the prevention of violence or disorder.
27. Paragraph 6.7 The Licensing Authority where relevant representations are made will consider attaching conditions to deter and prevent crime and disorder, if appropriate and necessary and these may include conditions from the model pool of conditions at Appendix 3. Certain premises may be required to install CCTV system to an evidential standard should the Council be satisfied it is necessary and /or appropriate to meet the licensing objectives.
28. Paragraph 6.8 The Council reserves its right to use its powers to designate areas where alcohol may not be consumed in a public place to meet the Public Safety and Crime and Disorder objectives.

## **LICENSING HOURS**

29. Paragraph 7.1 The policy recognises that longer (more flexible) licensing hours can contribute to easing crime and disorder problems by ensuring that concentrations of customers leaving premises simultaneously are avoided thus helping to reduce friction at taxi ranks, private hire offices, fast food outlets etc.
30. Paragraph 7.2 Individual applications will be considered on their merits and in general terms a flexible approach will be adopted. Fixed predetermined closing times for particular areas will not form part of the policy and restrictions on trading hours will be considered only where necessary to meet the licensing objectives.
31. Paragraph 7.3 The Licensing Authority, however, considers that the risk to disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning as the ambient noise levels will be lower. The Licensing Authority may impose stricter conditions with regard to noise control in areas, which have denser residential accommodation, but each premise will be considered on its individual merits.
32. Paragraph 7.5 The Licensing Authority also recognises the principle of 24 hour opening of all licensed premises. However, it considers that longer opening hours may be more acceptable in commercial areas with high levels of public transport. The grant of a licence will in all cases be dependent on the impact of an activity in relation to the licensing objectives.

33. Paragraph 7.6 where relevant representations are received, the Licensing Authority may have regard to the following where relevant (though this is a non exhaustive list);
- the nature of the area where the premises are located (e.g. commercial, residential)
  - Arrangements to ensure adequate availability of taxis and private hire vehicles, public transport.
  - Whether appropriate car parking is readily accessible to premises and whether the use/parking of vehicles would cause a demonstrable adverse impact on the amenity of residents.
  - whether the licensable activities are likely to cause adverse impact especially on local residents and whether appropriate measures will be put in place to prevent any adverse impact
  - in relation to the grant of a new premises licence whether the premises will give rise to a negative cumulative impact on one or more of the licensing objectives
34. In assessing the impact of the activity proposed the Licensing Authority may consider a number of factors inter alia,
- the type and scale of activity, the number and nature of clientele likely to attend
  - the levels of noise from the premises, which may be acceptable later in the evening
  - the proposed hours of operation
  - the levels of public transport accessibility for customers and the likely means of public or private transport that will be used, access to private hire/taxis
  - the means of access to the premises e.g. whether on principal pedestrian routes
  - the level of car parking demand on surrounding residential streets and its effect on local residents, and movement of traffic
  - the cumulative impact of licensed premises in an area and scope for mitigation
  - Frequency of the activity.
35. Operating Schedules to set out the measures to be taken to ensure that the licensing objectives are addressed. Applicants are also referred to paragraph 6.6.

## **PREVENTION OF PUBLIC NUISANCE**

36. Paragraph 13.1 Licensed Premises have significant potential to adversely impact on communities through public nuisances arising from their operation.
37. Paragraph 13.2 The Licensing Authority is aware of the importance of the licensed trade to the local economy as well as in cultural and social terms. The Licensing Authority is also concerned to protect the amenity of residents and businesses in the vicinity of licensed premises. 'Vicinity' is not defined in the Act or Guidance issued by the Secretary of State. Whether or not incidents can be regarded, as 'in the vicinity' of licensed premises is a question of fact and will depend on the particular circumstances of the case.
38. Paragraph 13.3 The Licensing Authority will interpret 'public nuisance' in its widest sense and include such matters as noise emanating from the premises, light, litter, odour and anti social behaviour where these matters impact on those living or working in an area.
39. Paragraph 13.4 Activities that involve public entertainment, drinking or eating, have the potential to impact adversely on their surrounding areas due to noise, litter, and odours. There is also the potential for disturbance caused by those attending licensable activities. Late at night the impact of licensed activities is likely to be more objectionable to residents

living close to a licensed activity, as the ambient noise levels are often lower so noise disturbance becomes more noticeable.

40. Paragraph 13.5 the policy allows for later opening hours except where there will be an adverse impact on the licensing objectives. In general the Licensing Authority will expect more comprehensive measures to be proposed at late night venues and/or where there has been a history of public nuisance.
41. Paragraph 13.6 on receipt of relevant representations, the Licensing Authority will assess the likelihood of it causing an adverse impact, by generally considering the following factors where relevant:
  - the location of the premises (in particular proximity to residential and other noise sensitive premises, e.g. hospitals, nursing homes, hospices and places of worship)
  - the type of activities, the number and nature of clientele likely to attend at the time of the application
  - the proposed hours of operation
  - levels of public transport accessibility for customers either arriving or leaving the premises (including taxis and private hire)
  - means of access to premises (whether on principal pedestrian routes)
  - the level of car parking demand on any surrounding residential streets and its effect on local residents
  - the cumulative impact on licensed premises in an area
  - the scope for mitigating an impact i.e. CCTV, door supervisors
  - the frequency of an activity
  - the design and layout of the premises
  - measures taken or proposed to be taken to prevent noise or vibration escaping from the premises e.g. sound proofing, air conditioning and sound limitation devices
  - measures taken to prevent unreasonable disturbance by customers/staff arriving and leaving the premises, goods deliveries etc
  - measures taken to lessen the impact of parking in the vicinity
  - control of operating hours for all or parts of the premises (e.g. gardens, last admission times and 'wind down' periods)
  - measures to be taken to prevent drunkenness on the premises
  - measures to ensure collection and disposal of litter and waste outside their premises
42. Paragraph 13.7 The Licensing Authority when considering an application will take into account previous substantiated nuisance complaints particularly when a statutory notice has been served. Applicants may wish to have regard to the Good Practice Guide on the Control of Noise from Pubs & Clubs produced by the Institute of Acoustics and the British Beer and Pub Association.
43. Paragraph 13.8 On receipt of relevant representations, the Licensing Authority, where it considers it necessary and/or appropriate may attach conditions to a licence to prevent public nuisance including those drawn from the Model Pool of Conditions. In particular, it may attach a condition requiring the use of door supervisors licensed by the Security Industry Authority.
44. Paragraph 13.9 The Licensing Authority requires Operating Schedules, where relevant to satisfactorily address the issue of public nuisance.
45. Paragraph 13.10 The Licensing Authority would also recommend applicants highlight local public transport links and taxi and private hire services within their premises, (including agreeing arrangements with nominated taxi and private hire firms for dropping off and collecting customers).

46. Paragraph 13.11 The Licensing Authority, will in accordance with the Guidance, focus on matters within the control of the individual Licence holder. The Licensing Authority accepts that the difficulty that a licence holder has in preventing anti-social behaviour by individuals once they are behind the direct control of the Licence Holder. However, the licensing objection of preventing public nuisance will not be achieved if customers from premises regularly conduct themselves in an anti-social manner to the detriment of local residents or businesses. In addition, the Council has a duty to do all it can to prevent crime and disorder in the Borough under the Crime & Disorder Act 1998.

## **PUBLIC SAFETY**

47. Paragraph 14.1 The Licensing Authority considers that members of the public when visiting licensed premises, have a right to expect that due consideration has been given to public safety. The Licensing Authority notes that the public safety objective is concerned with the physical safety of people using premises and not with public health which is dealt with in other legislation.
48. Paragraph 14.2 The Licensing Authority is committed to ensuring public safety across the Borough by working in partnership with Lancashire Police, Lancashire Fire & Rescue and Licence Holders.
49. Paragraph 14.3 Applicants should carefully consider the safety of the premises having regard to the licensable activities that are proposed and to address in the operating schedule, where relevant, how public safety will be achieved. Such measures may include, where relevant to the premises:
- the occupancy capacity of the premises
  - age, design and layout of the premises including means of escape
  - nature of the licensable activities to be provided, in particular the sale and supply of alcohol
  - hours of operation
  - customer profile (e.g. age)
  - Use of special effects e.g. lasers, pyrotechnics, smoke/foam machines.
50. Paragraph 14.4 The Act requires a plan of the premises to be supplied with operating schedules showing prescribed information.
51. The Licensing Authority will take notice of a health and safety risk assessment submitted with an operating schedule.
52. Paragraph 14.5 all licensed premises will be risk related according to a Protocol agreed with Lancashire Fire and Rescue. Inspections will be carried out by Lancashire Fire & Rescue in accordance with the Protocol.
53. Paragraph 14.6 The Licensing Authority may inspect premises where it considers it appropriate on public safety grounds.
54. Paragraph 14.7 on receipt of relevant representations the Licensing Authority may, where it considers it necessary and/or appropriate, impose conditions to secure the public safety objective including those drawn from the Model Pool of Conditions.. Any conditions imposed will relate to the particular circumstances of the individual premises and will not duplicate other requirements of the law.

## **REVIEWS**

55. Paragraph 41.1 The Act 2003 makes provision for the review of premises licences where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring.

56. Paragraph 41.2 At any stage following the grant of a premises licence, a responsible authority or an interested party (such as a resident living in the vicinity of the premises), may request the Licensing Authority review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
57. Paragraph 41.3 A review of a premises licence will follow any action by Lancashire Police to close down premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a Magistrates' Courts' determination sent to the Licensing Authority.
58. Paragraph 41.4 The Licensing Authority does not have the power to initiate its own review. However, officers of the Council who are specified as responsible authorities under the Act such as Environmental Health Officers may request the Licensing Authority for a review on any matter which relates to the promotion of one or more of the licensing objectives. Any such representations will be treated in the same way as representations made by any other body or individual.
59. Paragraph 41.5 In all cases, the representation must relate to a particular premises for which a premises licence is in force and must be relevant to the promotion of the licensing objectives.
60. Paragraph 41.6 Representations must be made in writing and may be amplified at the subsequent review or may stand in their own right. Additional representations, which do not amount to an amplification of the original representation, may not be heard at the hearing.
61. Paragraph 41.7 Where the request for a review originates from an interested party e.g. a local resident, residents' association, the Licensing Authority has first to consider whether the complaint made is not relevant, vexatious, frivolous or repetitious. Relevance, vexatious and frivolous complaints were dealt with in paragraph 40.
62. Paragraph 41.8 A repetitious complaint is one that is identical or substantially similar to:
  - a ground for review made in respect of the same premises licence which has already been determined; or
  - representations considered by the Licensing Authority when the premises licence was granted; or
  - representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and
  - in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of a licence.
63. Paragraph 41.9 The Licensing Authority recognises the need to prevent attempts to review licences, following the failure of representations on earlier occasions. The Licensing Authority will judge what is to be regarded as a reasonable interval in these circumstances. The Licensing Authority has regard to the recommendation in the guidance, that more than one review originating from an interested party should not be permitted within a period of 12 months on similar grounds except in compelling circumstances or where it arises following a Closure Order.
64. Paragraph 41.10 The Licensing Authority recognises that the promotion of the licensing objectives relies heavily on a partnership approach. The Licensing Authority would encourage authorised persons and responsible authorities to give licence holders warning of their concerns about problems identified at premises and of the need for improvement.
65. The Licensing Authority advises licence holders that a failure to respond to such a warning may lead to a responsible authority to request a review.

66. Paragraph 41.11 The Licensing Authority will hold a hearing following a request for a review from a responsible authority, interested party or after closure procedures described earlier.
67. The Licensing Authority will make the licence holder fully aware of the representations received together with supporting evidence in order for the licence holder or his legal representatives to be able to prepare a response.
68. Paragraph 41.12 In determining a review, the Licensing Authority has a range of powers it may exercise where it considers them necessary for the promotion of the licensing objectives:
- no action necessary as no steps required to promote the licensing objectives;
  - issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time; The Licensing Authority regards such warnings as important mechanisms for ensuring that the licensing objectives are effectively promoted and any warning issued will be in writing to the licence holder.
  - to modify the conditions of the premises licence (including adding new conditions, altering/omitting an existing condition);
  - excluding a licensable activity from the licence;
  - remove the designated premises supervisor,
  - suspend the licence for a period of three months;
  - to revoke the licence
69. Paragraph 41.13 The Licensing Authority in determining what action to take will seek to establish the cause(s) of concern and any action taken will be directed at these causes. Any action taken to promote the licensing objectives will be necessary and proportionate.
70. Human Rights Act Implications

The Human Rights Act 1998 makes it unlawful for a local authority to act in a way that is incompatible with the European Convention on Human Rights. The Council will have particular regard to the following convention Rights;

- Article 6 that in the determination of civil rights and obligations everyone is entitled to a fair public hearing within a reasonable time by an independent and impartial tribunal established by law;
- Article 8 that everyone has the right to respect for his home and family life;
- Article 1 of the First Protocol that every person is entitled to the peaceful enjoyment of his/her possessions including for example, possession of a licence.

#### Schedule 5 APPEALS Part 1 PREMISES LICENCES

##### 4 Variation of licence under section 35

- (1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under [section 35](#).
- (2) The applicant may appeal against any decision to modify the conditions of the licence under [subsection \(4\)\(a\)](#) of that section.

- (3) Where a person who made relevant representations in relation to the application desires to contend—
- (a) that any variation made ought not to have been made, or
- (b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under [subsection \(4\)\(a\)](#) of that section, he may appeal against the decision.
- (4) In sub-paragraph (3) “*relevant representations*” has the meaning given in [section 35\(5\)](#).

## IMPLICATIONS OF REPORT

71. This report has implications in the following areas and the relevant Directors’ comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

## COMMENTS OF THE MONITORING OFFICER

72. Some changes to the Licensing Act 2003 have been taken into account in the Section 182 Guidance issued by the Secretary of State but have not been reflected in the Council’s Statement of Licensing Policy. For example the concept of vicinity in relation to representations no longer applies and the test for imposing conditions has been amended from what is necessary to what is appropriate for the promotion of the licensing objectives. Members are advised to give more weight to the Section 182 Guidance where the Council’s Statement of Licensing Policy is out of date.

73. The applicant may appeal a refusal in whole or part of the application or the modification of conditions attached to the premises licence

74. Appeals are made to the local magistrates’ court within 21 days of notice of the decision.

JAMIE CARSON

DIRECTOR OF PUBLIC PROTECTION, STREETSCENE AND COMMUNITIES

There are background papers to this report.

Background Papers			
Document	Date	File	Place of Inspection
The Councils Statement of licensing Policy	2011		***
The Live Music Act 2012.	2013		
Section 182 Secretary of State Guidance.	Oct 2014		

Report Author	Ext	Date	Doc ID
S Culleton	5665	26 February 2015	