

LICENSING SUB-COMMITTEE

Tuesday, 9 July 2024

2.00 pm

Committee Room 4, City Hall

Membership: Councillors Loraine Woolley (Chair), Debbie Armiger and Pat Vaughan

Substitute member(s): Councillor Gary Hewson

Officers attending: Democratic Services, Rob Cuffling and Louise Simpson

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LICENSING SUB-COMMITTEE

Procedure for Hearings

- (1) The Chair will introduce him/herself and will introduce the other members of the sub-committee, the Licensing Officer, the Clerk to the sub-committee and any other officers present to advise the sub-committee.
- (2) The Chair will request all parties taking part in the proceedings to introduce themselves to the Sub -Committee.
- (3) The Chair will then ask the Licensing Officer to open the proceedings by:
 - stating the nature of the matter to be considered;
 - giving the name of the applicant or licence holder; and
 - where appropriate, the name of the premises or place concerned; and
 - outlining the application and the relevant representations and/or notices made and/or given in respect of the application.
- (4) The Chair will then ask the Licensing Officer to confirm whether or not the formal requirements in respect of the matter to be considered have been complied with.
- (5) If not satisfied as to any formal requirements, the sub-committee will decide whether to:
 - continue with its consideration of the matter; or
 - adjourn the proceedings to enable the formal requirements to be completed; or
 - dismiss the application.
- (6) The Chair will then explain the procedure the sub-committee intends to follow at the hearing and shall advise the parties of the period of time each will be allowed to make their application and/or representation. If the Chair considers that there is no need for a time limit, he should say so.
- (7) The sub-committee will then consider any representations in regard to the period of time allowed for the parties and any request made by a party for permission for another person to appear at the hearing to assist the licensing authority in regard to that party's application, representations or notice (such permission will not be unreasonably withheld).

- (8) The procedure for the hearing shall be as follows:
- (a) The applicant, or their representative, will present their case. In presenting the case the applicant, or their representative, may give evidence and may call any other person, given permission to appear by the sub-committee, to assist in the proceedings. Each shall, in turn:
 - give evidence;
 - may be questioned by any other party;
 - may be questioned by members of the sub-committee;
 - may, if necessary, be re-questioned by the applicant or their representative calling them.
 - (b) If a time limit has been imposed, the applicant and/or their representative shall not, in presenting the case, exceed the period of time allowed for this purpose.
 - (c) The other party or parties, or their respective representatives, will each, in turn, present their case(s). Where there is more than one other party, in the absence of agreement, the sub-committee will decide the order in which the cases shall be presented. In presenting the case any party, or their representative, may give evidence and may call any other person, given permission by the sub-committee to appear, to assist in the proceedings. Each shall, in turn:
 - give evidence;
 - may be questioned by any other party;
 - may be questioned by members of the sub-committee;
 - may, if necessary, be re-questioned by the applicant or their representative calling them.
 - (d) If a time limit has been imposed each other party and/or their representative shall not, in presenting the case, exceed the period of time allowed for this purpose.
 - (e) Once all parties have put their cases to the sub-committee, each party will be given the opportunity of summing up their case in the order they were presented. The Chair may propose that no more than 5 minutes will be allowed to each party for this purpose, but may take representations if any are made.
 - (f) Members of the sub-committee may ask the parties, or any persons present to assist, for any additional information or clarification required.
- (9) The Chair will then advise the parties that the sub-committee will retire to determine the application. The sub-committee will be accompanied by the Clerk to the sub-committee, whose only role will be to record the decision and the reasons for that decision. The sub-committee may, after retiring, call upon the Licensing Authority's legal representative if it requires clarification on a point of law.
- (10) The sub-committee will consider its decision. The decision of the majority of the sub-committee shall be the decision of the sub-committee.

- (11) There are timescales, depending on the nature of the application, by which the sub-committee must determine an application and the timescale will be included in the officer's report.
- (12) If the hearing requires a decision at the conclusion of the hearing then having reached a decision, the sub-committee shall reconvene to announce the decision to the parties. Before doing so, where legal advice has been sought, the legal representative will inform the parties of what advice was given and the parties shall be afforded the opportunity to comment on that advice.
- (13) If the decision does not have to be made at the conclusion of the hearing the sub-committee must make its decision within five working days beginning with the day or last day on which the hearing was held. This does not preclude the Sub-committee making its decision on the day or last day of the hearing.
- (14) The Chair will announce the sub-committee's decision together with the reasons for the decision. This will, where applicable, include details of any conditions imposed and the reasons for their imposition or, where no conditions have been imposed, the reason(s) for not doing so.

POINTS TO NOTE RELATING TO HEARINGS

- (a) Members of the sub-committee must remain throughout all of the hearing.
- (b) Members of the sub-committee must confine themselves to questions and **NOT** embark on discussions upon the merits or otherwise of the application or evidence until they consider their decision.
- (c) The strict rules of evidence do not apply so hearsay evidence is admissible.
- (d) Where a large number of interested parties are involved in a particular hearing, they will be encouraged to appoint a spokesperson or spokespersons so as to avoid duplication of evidence.
- (e) A general assumption will be made that all parties have read and understood the relevant paperwork and background documents before attending the hearing. There should be no need for parties to duplicate word for word the contents of their written submissions.
- (f) Unless indicated otherwise, the hearing will take place in public. If the public are to be excluded then full reasons for doing so will be given by the Chair.
- (g) In determining applications and representations members of the sub-committee will give appropriate weight to:
 - The argument and evidence presented by all parties;
 - The four licensing objectives of the Licensing Act 2003, namely
 - (a) the prevention of crime and disorder,
 - (b) the prevention of public nuisance,
 - (c) public safety, and
 - (d) the protection of children from harm;
 - The Statement of Licensing Policy of the City of Lincoln Council;
 - Section 182 Statutory Guidance issued by the Home Office;
 - Any steps necessary to promote the licensing objectives; and
 - Information contained in any operating schedule submitted by the applicant.
- (h) The general principles under which members of the sub-committee will consider all licensing applications are:
 - A fair and unbiased mind;
 - On its own merits;
 - Any pre-conceived opinions and resolutions will be put aside;
 - They will act without any prejudice or partiality;
 - They will consider both the interests of the public and the rights of the applicant; and
 - They will treat all applicants fairly and equally.
- (i) The sub-committee is required to give reasons for its decision. Such reasons need to be clear and include an explanation of why it has reached its decision including what it relied on to do so (e.g. what evidence was accepted, and what evidence was rejected, and why).
- (j) If, in making its decision, the Sub-Committee considered it proper to depart from the Section 182 Guidance or its own Licensing Policy it is also required to give full reasons for so departing.

LICENSING SUB-COMMITTEE**9 JULY 2024**

SUBJECT:	REVIEW OF PREMISES LICENCE FOLLOWING CLOSURE ORDER ISSUED BY LINCOLN MAGISTRATES COURT KIKUSH, 371 HIGH STREET, LINCOLN, LN5 7RU
DIRECTORATE:	COMMUNITIES AND ENVIRONMENT
REPORT BY:	ROB CUFFLING, LICENSING OFFICER

1. Purpose of Report

- 1.1 To determine a review of a premises licence in respect of premises known as Kikush, 371 High Street, Lincoln, LN5 7RU.

2. The Application

- 2.1 Under Section 167 of the Licensing Act 2003 a premises licence review is triggered where a Magistrates' Court has made a Closure Order ('the Order') under Section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014 (the 2014 Act).

- 2.2 On 25 June 2024, Lincolnshire County Council's Trading Standards issued a Closure Notice under Section 76 of the Anti-Social Behaviour, Crime & Policing Act 2014. The Closure Notice was issued as they had grounds to suspect the use of the premises had resulted in, or was likely to result in nuisance to members of the public, or that there had been or was likely to be disorder near the premises associated with the use of the premises and that the notice was necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

A copy of Section 76 of the Anti-Social Behaviour Crime & Policing Act 2014 is attached at **APPENDIX A**.

- 2.3 Whenever a closure notice is issued an application must be made under section 80 of the 2014 Act to a magistrate's court for a closure order.

A Copy of Section 80 of the Anti-Social Behaviour Crime & Policing Act 2014 is attached at **APPENDIX B**.

- 2.4 On Thursday 27 June 2024, Lincoln Magistrates Court heard the application and made a Closure Order that closed the premises for a period of 3 months. A copy of the Closure Order is attached at **APPENDIX C**.

- 2.5 In the case of a licensed premises the court must notify the relevant licensing authority of the Closure Order. Official notification was received on 28 June 2024.

- 2.6 Once the licensing authority has received notification of the Order it must

review the premises licence and reach a determination no later than 28 days after the day on which it received the notification.

2.7 The review hearing itself must commence within 10 working days of receipt of the notification, with 5 working days' notice being given to the licence holder and any other relevant participants to the hearing.

2.8 As required by the Act the licensing department has:

- Notified the Responsible Authorities of the review; and
- Caused the notice of review to be displayed at the premises, on the Council's notice board and council website for no less than 7 consecutive days.

As far as is known the notices were in place for the full 7-day period.

2.9 Representations were invited between 29 June and 5 July.

3 Relevant Representations – Responsible Authorities

3.1 On 4 July 2024 a relevant representation was received from Lincolnshire Police. The contents of which can be found at **APPENDIX D**. This includes several Annexes to the representation, with supporting information from Lincolnshire County Council Trading Standard.

4. Relevant Representations – Licence Holder / Other persons

4.1 At the time of writing this report there have been no representations from the licence holder. Any evidence produced prior to the Hearing will of course be forwarded to Members of the Sub-Committee upon receipt.

5 The Premises

5.1 The premises is a small to medium sized shop, licensed for alcohol off sales. The premises also sells a selection of essential products as well as other age-restricted products.

5.2 The premises licence has been in place since April 2021. Vytautas Kutka has been the licence holder and designated premises supervisor (DPS) throughout. A copy of the current licence can be found at **APPENDIX E**.

5.3 The conditions on the licence are a combination of mandatory conditions attached to all alcohol off licensed premises as well as conditions offered by the licence holder (Vytautas Kutka) on initial application in 2021.

6. Promotion of Licensing Objectives

6.1 The duty of the Licensing Authority is to promote the licensing objectives having regard to the Act and Regulations made there under, Guidance issued under S182 of the Act by the Home Office and the Council's own Licensing Policy.

7. Considerations

7.1 Section 182 Guidance and Licensing Authority Policy

7.2 Chapter 11 of the S182 Guidance describe the Review process and paragraphs 11.16 to 11.23 gives guidance on the powers of a licensing authority on the determination of a review. Paragraphs 11.24 to 11.28 deals with reviews arising in connection with crime (See **APPENDIX F**).

7.3 Chapter 10 of the Council's Statement of Licensing Policy refers to Reviews (See **APPENDIX G**).

7.4 Chapter 5 of the Council's Statement of Licensing Policy refers to the Licensing Objectives (See **APPENDIX H**).

7.5 The conditions attached to the licence are the mandatory conditions attached to an alcohol off licensed premises and conditions offered by the licence holder on initial application. If the Licensing Authority is minded to place further conditions on the premises licence, then they may only be imposed where they are appropriate and proportionate for the promotion of one or more of the four licensing objectives. Conditions may not be imposed for other purposes.

7.6 Such conditions should be expressed in unequivocal and unambiguous terms in order that they are understood and not subject to legal challenge.

7.7 Lord Justice Scott Baker in the case of *Crawley Borough Council v Stuart Attenborough and Angela Attenborough* said *"Let me say a brief word in general terms. It is important that the terms of a premises licence and any conditions attached to it should be clear; not just clear to those having specialized knowledge of licensing, such as the local authority or the manager of the premises, but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all."*

7.8 Paragraphs 1.8 of the Council's Licensing Policy states:
The purpose of licensing is to control licensable activities and authorisations within the terms of the Act. Each licence application or authorisation will be considered on its own merits in the context of the four licensing objectives...

8. Human Rights Act

8.1 Article 6 – right to a fair hearing

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where

publicity would prejudice the interests of justice.”

The right to engage in commercial activities is a civil right –

Kaplan v United Kingdom 1980

Pudas v Sweden 1987

8.2 Article 8 – right to respect for private and family life

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Removal or restriction of a licence may affect a person’s private life.

8.3 Article 1, Protocol 1 – peaceful enjoyment of possessions

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The right to engage in commercial activities under the benefit of a licence or registration is a possession

Tre Traktorer Aktiebolag v Sweden 1989

9. Other Considerations

9.1 The Sub-committee must determine this application and take what actions, if any, are appropriate and proportionate for the promotion of the licensing objectives identified.

9.2 The Sub-committee’s determination should be made on this case’s individual merits by;

- considering the evidence which led to the Closure Order and review application and representations concerning the incidents and the operation and management of the licensable activities; and should be evidence-based.

9.3 The onus falls upon those making the representations to show that the promotion of the licensing objectives is at risk.

9.4 The Sub-Committee should expect original evidence to be put before it by any party. It is not enough for the Sub-Committee simply to rely upon material submitted; it must apply a critical mind to the quality and reliability of that material for itself.

- 9.5 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end.
- 9.6 If the Sub-Committee is minded to impose further conditions on the licence then any such conditions should be achievable, realistic, necessary, appropriate, proportionate and within the control of the licence holder. They should be based on a proper, common-sense consideration of the risks to the licensing objectives identified and what can realistically be done to mitigate them.
- 9.7 This hearing is subject to Regulation 26 of the Licensing Act 2003 (Hearings) Regulations 2005 and the Sub-Committee must make its determination at the conclusion of the hearing.

10. Options

- 10.1 The authority must, having regard to 'the Order' and representations made, take such of the steps mentioned below as it considers appropriate, for the promotion of the licensing objectives.
- 10.2 In accordance with Section 167(6) Licensing Act 2003, the following options are available to the Sub-Committee:
- a) to modify the conditions of the licence (either permanently or for a period not exceeding 3 months)
 - b) to exclude a licensable activity from the scope of the licence (in this case there is only one activity)
 - c) to remove the designated premises supervisor from the licence;
 - d) to suspend the licence for a period not exceeding three months;
 - e) to revoke the licence; or
 - f) take no action.
- 10.3 The Sub-Committee should note:
Conditions of the licence are modified if any of them are altered or omitted or any new condition is added.
This could include modification of the licensing hours.
- 10.4 Should the Sub-Committee consider taking a step mentioned in either a) or b) in paragraph 10.2 above, it may provide that the modification or exclusion is to have effect for only for a specified period (not exceeding three months).
- 10.5 Any decision made by the Sub-Committee to take any of the steps a) to d), mentioned in Paragraph 10.2 above, will take effect once notified to the holder of the licence. However, the licensing authority may, on such terms as it thinks fit, suspend the operation of that decision (in whole or in part) until the 'relevant time'.
- 10.6 Where a decision is made to revoke a premises licence, and the premises have been subject to a closure order issued by the magistrates court under section 80 of the 2014 Act, then the premises must remain closed until the

‘relevant time’ (however the licence would remain in force during this time).

In this instance the ‘relevant time’ means –

- (a) the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, the time the appeal is disposed of.

10.7 Paragraphs 10.5 and 10.6 above are subject to paragraph 18 of Schedule 5 of the Licensing Act 2003 concerning appeals.

10.8 The Sub-Committee is required to give reasons for its decision. Such reasons need to be clear and include an explanation of why it has reached its decision including what it relied on to do so (e.g. what evidence was accepted, and what evidence was rejected, and why).

11. Appeal

11.1 The holder of the premises licence or any other person who made relevant representations may appeal the decision made by the Sub-Committee to the Magistrates Court. Any appeal must be made within 21 days of the day on which the appellant is notified, in writing, by the Licensing Authority of the decision to be appealed against.

12. List of associated papers

12.1	Appendix A	Section 76 – Anti-social Behaviour, Crime and Policing Act 2014
	Appendix B	Section 80 – Anti-social Behaviour, Crime and Policing Act 2014
	Appendix C	Lincolnshire magistrates court - Closure Order
	Appendix D	Police representation and supporting Annexes
		Annex A – Email correspondence
		Annex B – Statement of PC Casey
		Annex C – Photos taken by PC Casey
		Annex D – Trading Standards Closure Order bundle
		Annex E – Photo of Kikush shop frontage
	Appendix E	Copy premises licence
	Appendix F	Chapter 11 – Section 182 guidance
	Appendix G	Paragraph 10 – Licensing Policy
	Appendix H	Paragraph 5 – Licensing Policy

Lead Officer:

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