

SUBJECT:	APPLICATION FOR A VARIATION OF PREMISES LICENCE TREBLES, 5 SALTERGATE, LINCOLN, LN2 1DH
DIRECTORATE:	COMMUNITIES & ENVIRONMENT
LEAD OFFICER:	ROB CUFFLING, LICENSING OFFICER

1. Purpose of Report

1.1 To determine an application for a variation of premises licence made by Himesh Patel in respect to premises known as Trebles, 5 Saltergate, Lincoln, LN2 1DH

2. The Application

2.1 Under the provisions of section 35 of the Licensing Act 2003 on the 31st August 2021 an application for a variation of a premises licence was received from Himesh Patel. A copy of the application can be seen at **Appendix A**.

2.2 The application seeks to authorise a variation to the following activities:

- Live music outdoors for the hours 09:00 to 01:00 for seven days a week.
- Recorded music outdoors for the hours 00:00 to 01:00 for seven days a week.

2.3 Currently the premises is licensed outdoors until 00:00 for recorded music only. A copy of the existing licence can be seen at **Appendix B**.

2.4 There are no other licensable activities being varied. However, the applicant has requested the removal of outdated public entertainment licence conditions.

3. Promotion of Licensing Objectives

3.1 In submitting their application, the applicant is required to describe any steps intended to be taken in order to promote the following 4 licensing objectives:

- The Prevention of Crime and Disorder
- Prevention of Public Nuisance and
- Public Safety
- The Protection of Children from Harm

3.2 Section M of the application form found at **Appendix A** describes any additional steps that the applicant intends to take to promote the licensing objectives. On this occasion the applicant does not feel any further steps are required.

4. Relevant Representations – Responsible Authorities

4.1 There have been no representations from any responsible authority.

5. Relevant Representations – Other Persons

5.1 On the 28th September 2021 a representation was received from Ms Eleanor Bryan regarding the variation. Stating that the licensing objective of the Prevention of Public Nuisance was at risk.

5.2 A copy of the representation can be found at **Appendix C**.

6. Other Information

6.1.1 The applicant submitted a number of Temporary event notices to trial a DJ style event in the premises outside area, three were prior the application being submitted and four were during the representation period. These events have run on Wednesday nights until 1am.

6.1.2 No objections were received by the Lincolnshire Police or the City of Lincoln Councils Noise Pollution to these temporary events.

6.1.3 However, Noise Pollution are currently investigating the premises under their own powers due to complaints they have received relating to them

6.1.4 At the time of writing this report, their intention is to monitor the premises to decide whether in their opinion a noise nuisance is taking place.

6.1.5 An update on their investigation can be provided at the hearing.

6.2 Section 182 Guidance and Licensing Authority Policy

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

6.2.2 Copies of the Statutory Guidance issued by the Home Office, known as Section 182 guidance and a copy of the Council's Statement of Licensing Policy will be available for consultation at the hearing.

6.2.3 The Council's policy requires the Sub-Committee to determine applications on their own merits.

6.2.4 The Sub-Committee must consider the points raised in the representation at **Appendix C**, on the likely effect of the grant of this variation on the licensing objectives identified within them. The onus falls upon those making representations to show that such consequences, based on the balance of probabilities (i.e. more probable than not), are a likely effect of the grant of this variation.

6.2.5 S182 paragraph 8.41:

In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.

6.2.6 S182 paragraph 8.42:

Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

- *any risk posed to the local area by the applicants' proposed licensable activities*

6.2.7 S182 paragraph 2.15:

The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable.

6.2.8 Paragraph 5.4.1 of the Council's Licensing Policy states:

Licensed premises have a significant potential to impact adversely on communities through public nuisances that arise from their operation. The Licensing Authority wishes to maintain and protect the amenity of residents and businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

6.2.9 Paragraphs 1.9 and 2.8 of the Council's Licensing Policy states:

The Licensing Authority cannot attach conditions to licences, certificates or provisional statements unless they are mandatory, volunteered by the applicant

or imposed by it following a hearing resulting from the receipt of relevant representations.

The Licensing Authority does not intend to duplicate existing legislation and regulatory regimes that already place obligations on employers and operators (for example, The Health and Safety (First Aid) Regulations 1981 and the Regulatory Reform (Fire Safety) Order 2005) and it will therefore not attach conditions to licences if they are already adequately covered by other legislation.

- 6.2.10 The only conditions which should be imposed on a premises licence (as opposed to being volunteered on the operating schedule) are those which the Sub-Committee consider appropriate and proportionate for the promotion of the licensing objectives. Any conditions should be tailored to the individual characteristics and activities of the premises and determined on a case-by-case basis. (See paragraph 10.10 of S182 Guidance).
- 6.2.11 Such conditions should be expressed in unequivocal and unambiguous terms in order that they are understood and not subject to legal challenge.
- 6.2.12 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. “*

6.3 Human Rights Act

6.3.1 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

6.3.2 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.

6.3.3 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

6.3.4 The holding of this hearing where the applicant and those making representations can give written or oral evidence either personally or through a representative ensures that the requirements of the Human Rights Act has been complied with.

6.4 Other Considerations

6.4.1 The Sub-committee is charged with furthering the objectives of the legislation in the decisions that it makes. It is not bound by the civil or criminal procedure rules. It should consider the material which has been placed before it, question any statement made either in favour of or against the variation by way of fact finding with a critical mind and then make a decision which appears to it to be logical, sensible and appropriate to advance the policy of the legislation in its area.

6.4.2 That decision must be based on evidence, but that means no more than it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant.

6.4.3 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.

- 6.4.4 In determining the variation with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - the Section 182 Guidance; and
 - its own statement of licensing policy.
- 6.4.5 Anyone may make a representation and the weight the Sub-Committee put on such representation is for it to decide.
- 6.4.6 The Sub-Committee is entitled to, and indeed obliged to, consider any relevant material that appears useful in coming to a decision, including its own local knowledge.
- 6.4.7 All parties to the hearing will have received a copy of the Sub-Committee agenda and had the opportunity to read it prior to the hearing.
- 6.4.8 If the Sub-Committee is minded to impose further conditions or modify conditions offered in the operating schedule then any such conditions should be achievable, realistic, 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 in the variation and representations and what can realistically be done to mitigate them.
- 6.4.9 This hearing is subject to Regulation 26 of the Licensing Act 2003 (Hearings) Regulations 2005 and the Sub-Committee must make its determination within a period of five working days beginning the day or the last day on which the hearing was held.
- 6.4.10 Therefore, the Sub-Committee does not have to make its determination at the conclusion of the day or last day of the hearing as the case may be.
- 6.4.11 Notices of this hearing were forwarded to all parties on the 30th September 2021.

7. Options

- 7.1 The Sub-Committee must, having regard to the variation and representation, take such of the steps mentioned below as it considers appropriate, rational and reasonable for the promotion of the licensing objectives.
- 7.2 The following options are available to the Sub-Committee:
- Grant the variation as applied for, with no additional conditions;
 - Grant the variation with additional conditions or modified conditions attached to alleviate the concerns raised through the representation.

(NB Conditions cannot be attached with respect to any part of the variation on which no representation has been received.);

- To partially grant the variation in respect of either activities or hours or a combination of both;
- Refuse the variation.

7.3 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).

7.4 If the Sub-Committee refuses the variation, it must give reasons why it refused and why conditions would not have been effective in this instance.

8. List of Associated Papers

8.1 Appendix A: Application for a variation of premises licence

Appendix B: Premises Licence

Appendix C: Representation of Ms Eleanor Bryan

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