

<b>REPORT TO:</b>	LICENSING ACT 2003 SUB-COMMITTEE
<b>DATE:</b>	18 AUGUST 2022
<b>SUBJECT:</b>	<b>APPLICATION FOR VARIATION OF A PREMISES LICENCE – THE TURKS HEAD, 1 ASWELL STREET, LOUTH, LN11 9BA</b>
<b>PURPOSE:</b>	To consider an application to vary the premises licence for the Turks Head, 1 Aswell Street, Louth, LN11 9BA. The application has received representations from local residents and the Council’s Environmental Health Team.
<b>KEY DECISION:</b>	Not Applicable.
<b>REPORT OF:</b>	Service Manager – Safer Communities
<b>REPORT AUTHOR:</b>	Mr Adrian Twiddy (Principal Licensing Officer)
<b>WARD(S) AFFECTED:</b>	Louth
<b>EXEMPT REPORT?</b>	The content of this Report is not exempt from publication.  However, a confidential evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. The evidence pack is exempt from publication – the pack is not for publication by virtue of Paragraphs 1 and 2 of Part I of Schedule 12A of the Local Government Act 1972.

## **SUMMARY**

This report considers an application by The Turks Head (Louth) Limited for variation of the premises licence in respect of the Turks Head, 1 Aswell Street, Louth, LN11 9BA.

The premises licence variation application seeks to firstly increase the internal licensed area of the premises by adding a function room / restaurant area to the first floor of the venue. Secondly, to extend the external licensed area with the construction of a roof terrace to the first floor. The applicant has volunteered a terminal hour of 2300 Hours for use of the roof terrace.

A representation, regarding the licence variation application, has been received from the Council’s Environmental Health Team (who are acting as a Responsible Authority under the Licensing Act 2003). Three representations have also been received from local residents.

## RECOMMENDATIONS

The Sub-Committee must consider the application for variation of a premises licence and having regard to the representations, take such of the steps mentioned below (if any), as they consider appropriate for the promotion of the licensing objectives. The steps are:

- To modify the conditions of the licence
- To reject the whole or part of the variation application

If none of the above steps is considered appropriate the variation application should be granted in the form it was made.

## REASONS FOR RECOMMENDATIONS

The Licensing Authority must hold a hearing to consider the representations - unless the representations are withdrawn by the Responsible Authority and other parties (local residents).

All parties within the licensing process must seek to promote the licensing objectives as defined under the Licensing Act 2003. The 2003 Act sets out the steps which the Licensing Authority may take when considering a representation regarding a premises licence application.

## OTHER OPTIONS CONSIDERED

Not Applicable - Under the terms of the Licensing Act 2003 this Authority must consider the representations and the premises licence variation application.

## 1. BACKGROUND

**1.1. Premises Licence Applicant:** The Turks Head (Louth) Limited.

**1.2. Application:** The application, subject of this Report, is to vary a premises licence under Section 34 of the Licensing Act 2003.

**1.3. Premises:** The Turks Head, 1 Aswell Street, Louth, LN11 9BA. A plan showing the location the Turks Head is attached at **Appendix A** of this Report. An extract from the current premises licence for the site can be found at **Appendix B** of this Report.

**1.4.** The premises licence variation application seeks to firstly increase the internal licensed area of the premises by adding a function room / restaurant area to the first floor of the venue. Secondly, to extend the external licensed area with the construction of a roof terrace to the first floor. The applicant has volunteered a terminal hour of 2300 Hours for use of the roof terrace. The application indicates that the roof terrace has yet to be constructed.

**1.5. Designated Premises Supervisor (DPS):** The DPS for the site is Ms Joanna Faulkner-Smith whose personal licence was issued by this Authority in August 2016.

## **2. REPORT**

- 2.1.** A plan showing the current layout of the premises can be found at **Appendix C** of this Report. A plan showing the proposed new layout of the premises can be found at **Appendix D**. The plan at **Appendix D** also shows a proposal for an increase in the size of the external licensed area in the front of the ground floor of the premises – however, the applicant appears to have neglected to describe this particular part of the variation application in the part of the application form that asks for a brief written description / summary of the variation proposals.
- 2.2.** The premises is currently authorised to provide regulated entertainment (indoors) during 0900 to 0400 Hours and undertake the supply of alcohol (for consumption on and off the premises) 0900 to 0330 Hours. The authorised hours for late night refreshment are 2300 to 0400. The variation application is seeking the same hours for the proposed function room / restaurant area on the first floor of the venue. The proposed hours for the roof terrace on the first floor are 0900 to 2300 Hours.
- 2.3.** As required under the terms of the Licensing Act 2003 the premises licence application has been advertised in the local newspaper and also outside the premise. Details of the application were also displayed on the Council's website. Persons, including those living and/or operating businesses in the vicinity of the premise, and the Responsible Authorities (e.g. Lincolnshire Police, Trading Standards, Health and Safety, etc.), were permitted to submit representations regarding the licence application. Any representation must relate to one or more of the licensing objectives:
- The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 2.4.** Environmental Health have made a representation in relation to the premises licence variation application. A copy of the representation is attached at **Appendix E** of this Report. The representation has been issued on the grounds of the prevention of public nuisance licensing objective. In particular the representation indicates that, if the Sub-Committee is minded to grant the variation application to permit the use of a roof terrace, then consideration should be given to stipulating a terminal hour of 2200 Hours for the terrace (rather than the 2300 terminal hour stipulated in the variation application). The Environmental Health representation also refers to a noise diary submitted to the Team by a local resident – see Paragraph 2.6 of this Report.
- 2.5.** None of the other Responsible Authorities (e.g., Lincolnshire Trading Standards, Lincolnshire Fire & Rescue, Health and Safety, etc.) have submitted a representation in relation to the licence application.

2.6. Three local residents have made representations in relation to the premises licence variation application. Redacted copies of the representations are attached at **Appendix F** of this Report. The representations have been made by:

- Ms Lyndsey Howis
- Mr Darren Melton
- Ms Melanie Lockie-Evans

Unredacted copies of the representations will be available at the hearing for Members of the Sub-Committee. One of the residents has completed a noise diary following the submission of their noise complaint to the Environmental Health Team. A copy of the noise diary will be forwarded to Members of the Sub-Committee (and the licence applicant) under separate cover to this Report.

2.7. Under the terms of the Licensing Act 2003, an operating schedule forms a part of the premises licence application process. The operating schedule outlines what activities are proposed, when these activities will take place, the overall opening hours and how the activities will be managed, particularly in respect of the licensing objectives. A critical part of the operating schedule is the section where the applicant describes the steps intended to promote the four licensing objectives. A copy of the applicant's intended steps to promote the licensing objectives, as a result of the variation application, can be found at **Appendix G** of this Report. Members of the Sub-Committee will note that, apart from indicating that operation of the roof terrace will cease at 2300 Hours, the applicant has not indicated that any additional steps (over and above the current licence conditions) will be undertaken in order to promote the licensing objectives.

2.8. A full copy of the licence variation application will be available for inspection at the licensing hearing if Members wish to do so.

2.9. Any evidence submitted by the applicant, in support of the licence application, will be forwarded to the Members of the Committee separate to this Report.

2.10. **Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003:**  
It is considered that the extracts from the national guidance, shown at **Appendix H** of this Report, have a bearing upon the premises licence application.

2.11. In particular, the Home Office Section 182 Guidance indicates that:

#### ***THE ROLE OF RESPONSIBLE AUTHORITIES***

***Paragraph 9.12*** - Each Responsible Authority will be an expert in their respective field, and in some cases, it is likely that a particular Responsible Authority will be the Licensing Authority's main source of advice in relation to a particular licensing objective. For example, the Police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The Police should usually therefore be the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any Responsible Authority under the 2003 Act may make representations with regard to any of the licensing objectives

*if they have evidence to support such representations. Licensing Authorities must therefore consider all relevant representations from Responsible Authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all Responsible Authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*

- 2.12. **Local Policy Considerations:** It is considered that the extracts from the Council's Local Statement of Licensing Policy, shown at **Appendix I** of this Report, have a specific bearing upon the premises licence application.

### **3. CONCLUSION**

- 3.1. The Licensing Act 2003 sets out options which the Licensing Authority can utilise in order to promote the licensing objectives following the consideration of a premises licence variation application (which has received a valid representation). Any step taken by the Licensing Authority must be appropriate for the promotion of the licensing objectives. The licensing objectives are detailed in Paragraph 2.1 of this Report.
- 3.2. The steps open to the Sub-Committee include refusing to grant the premises licence variation application. Alternatively, there is the option of rejecting part of the licence variation application. Such a step or any other amendment to the licence variation application must only be taken if the Sub-Committee are persuaded that there is clear potential for harm resulting from the use of the premises in the licence application's current form. If the Sub-Committee considers that there is no potential for harm and no steps are necessary, then the licence variation application should be granted in the form it was made.
- 3.3. The Sub-Committee should examine the potential for harm and if it is satisfied that this is real, it should take sufficient and reasonable measures to prevent this harm from occurring. The Sub-Committee should only refuse the licence variation application if it is of the opinion that no lesser step would ensure compliance with the licensing objectives.

#### **EXPECTED BENEFITS TO THE PARTNERSHIP**

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

#### **IMPLICATIONS**

##### **SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP**

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

##### **CORPORATE PRIORITIES**

The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the District's residents, visitors and business community.

##### **STAFFING**

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

## **CONSTITUTIONAL AND LEGAL IMPLICATIONS**

1. The Sub-Committee must consider the application for variation of a premise licence and having regard to the representations, take such of the steps mentioned below (if any), as they consider appropriate for the promotion of the licensing objectives. The steps are:

- To modify the conditions of the licence
- To reject the whole or part of the variation application

If none of the above steps is considered appropriate the variation application should be granted in the form it was made.

2. The licensing objectives are:

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

3. Both the applicant and any person / body making relevant representations may appeal any decision made by the Sub-Committee to the Magistrates Court. On determining an appeal, the Court may:

- Dismiss the appeal.
- Substitute for the decision appealed any other decision which could have been made by the Licensing Authority, or
- Remit the case to the Licensing Authority to dispose of in accordance with the direction of the Court.

4. The conditions of the licence are modified if any of them are altered or omitted or any new condition is added. Conditions can only be attached to a premises licence if they are considered appropriate for the promotion of the licensing objectives.

5. If consideration is being given to attaching conditions, Members should consider, are the proposed conditions:

- Appropriate;
- Relevant;
- Relevant to the activity/premises/venue;
- Enforceable;
- Precise;
- Reasonable, and
- Achievable.

6. The breach of a premises licence condition is an offence punishable (if the Licensing Authority or Lincolnshire Police are minded to prosecute) by an unlimited fine and/or six months imprisonment.

7. The Licensing Authority's determination of the licence application should be evidence-based. Any decision must be justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

## **DATA PROTECTION**

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

## **FINANCIAL**

The processing of this premises licence variation application is being undertaken as part of the normal duties carried out by the Licensing Team with no additional costs involved. The premises licence application fee in this case is £190.00.

As with all licence applications it is possible that if a Licensing Committee decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

## **RISK MANAGEMENT**

There is a theoretical risk of civil action against the Licensing Authority if it is found not to have exercised due diligence in licensing matters.

## **STAKEHOLDER / CONSULTATION / TIMESCALES**

The representations from the Responsible Authority and other parties were received within the requisite 28-day period.

## **REPUTATION**

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

## **CONTRACTS**

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

## **CRIME AND DISORDER**

All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1981 when carrying out their functions as Licensing Authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area

## **EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING**

**Equality Implications:** There are no equality implications arising from the recommendations of this Report.

**Human Rights:** The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e. is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

The premises applicant is entitled to a fair hearing; Article 6 of the European Convention on Human Rights applies. The Human Rights of the wider community are also engaged.

**Safeguarding Implications:** There are no specific safeguarding implications arising from the recommendations of this Report.

## **HEALTH AND WELL BEING**

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

## **CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

Not Applicable – This is a Licensing Act 2003 Sub-Committee Report.

## ACRONYMS

DPS - Designated Premises Supervisor

<b>APPENDICES</b>	
Appendices are listed below and attached to the back of the report: -	
<b>APPENDIX A</b>	Location plan of the Turks Head, 1 Aswell Street, Louth, LN11 9BA.
<b>APPENDIX B</b>	Extract from the current premises licence for the Turks Head, 1 Aswell Street, Louth, LN11 9BA.
<b>APPENDIX C</b>	Plan Showing the Current Layout of the Turks Head, 1 Aswell Street, Louth, LN11 9BA.
<b>APPENDIX D</b>	Plan Showing the Proposed Layout of the Turks Head, 1 Aswell Street, Louth, LN11 9BA.
<b>APPENDIX E</b>	Representation submitted by Environmental Health in respect of the premises licence variation application for the Turks Head, 1 Aswell Street, Louth, LN11 9BA.
<b>APPENDIX F</b>	Representations by Local Residents in respect of the premises licence variation application for the Turks Head, 1 Aswell Street, Louth, LN11 9BA.
<b>APPENDIX G</b>	Extract from the Premises Licence Variation Application – Steps the Applicant Intends to Take to Promote the Licensing Objectives.
<b>APPENDIX H</b>	Extracts from the Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003.
<b>APPENDIX I</b>	Extracts from the Local Licensing Policy Statement.

<b>BACKGROUND PAPERS</b>	
Background papers used in the production of this report are listed below: -	
<b>Document title</b>	<b>Where the document can be viewed</b>
Guidance issued by the Home Office to Licensing Authorities under Section 182 of the Licensing Act 2003	<a href="https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003">https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003</a>
The Council's Statement of Licensing Policy adopted under the Licensing Act 2003.	<a href="https://www.e-lindsey.gov.uk/article/5539/Alcohol-and-Entertainment">https://www.e-lindsey.gov.uk/article/5539/Alcohol-and-Entertainment</a>



<b>CHRONOLOGICAL HISTORY OF THIS REPORT</b>
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A report on this item has not been previously considered by a Council body.
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<b>REPORT APPROVAL</b>
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Report author:	Mr Adrian Twiddy (Principal Licensing Officer) Tel. No. 01507 601111 Email: adrian.twiddy@e-lindsey.gov.uk
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Signed off by:	Mr Jon Challen (Service Manager – Safer Communities) Tel. No. 01507 601111 Email: jonathan.challen@e-lindsey.gov.uk
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Approved for publication:	Not Applicable.
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