

REPORT TO:	LICENSING ACT 2003 SUB-COMMITTEE
DATE:	05 JANUARY 2024
SUBJECT:	APPLICATION FOR REVIEW OF A PREMISES LICENCE – LITTLE NANS CAFE, UNIT 3, CHERRY PARK, SOUTH ROAD, CHAPEL ST LEONARDS, PE24 5TS (PLAICE ON THE PARK LIMITED)
PURPOSE:	This Report considers an application by the Council’s Environmental Health Department for a review of the premises licence held in respect of Little Nans Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS.
REPORT OF:	Group Manager Public Protection.
REPORT AUTHOR:	Mr Adrian Twiddy (Principal Licensing Officer)
WARD(S) AFFECTED:	Chapel St Leonards
EXEMPT REPORT?	The content of this Report is not exempt from publication. However, an evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. The evidence pack contains personal data and so is exempt from publication. The evidence pack is not for publication by virtue of Paragraph 1 of Part I of Schedule 12A of the Local Government Act 1972.

SUMMARY

This Report considers an application by the Council’s Environmental Health Department for a review of the premises licence held in respect of Little Nans Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS. The review application has been submitted by the Environmental Health Team under the provisions of Section 51 of the Licensing Act 2003.

The Environmental Health Team are seeking the removal of the live music licensing exemption from the premises (specifically the outdoor areas in the vicinity of Little Nan's) and the addition of licence conditions controlling the provision of outdoor music at the site. The Team is asking that the outdoor provision of amplified regulated entertainment be limited to a maximum of 3 days per calendar year.

The application for review has not attracted representations from the other Responsible Authorities (e.g. Lincolnshire Police, Lincolnshire Fire & Rescue, etc.) – but two representations have been received from Other Parties in support of the licence review submitted by the Environmental Health Team.

RECOMMENDATIONS

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

- To modify the conditions of the licence.
- To exclude a licensable activity from the scope of the licence.
- To remove the Designated Premises Supervisor (DPS).
- To suspend the licence for a period not exceeding three months.
- To revoke the licence.

In addition, if it is considered appropriate to do so the Sub-Committee can make a statement under Section 177A of the Licensing Act 2003 specifically disapplying the live music exemption given to the premises. If the Sub-Committee is minded to remove the live music licensing exemption, then following such removal it may also be minded to add conditions to the licence controlling the provision of outdoor entertainment at the site.

The Sub-Committee may also consider issuing a warning to the licence holder and/or to recommend improvement within a particular period of time.

If none of the above steps is considered appropriate the premises licence should remain in the form it was granted.

REASONS FOR RECOMMENDATIONS

The Licensing Authority has a duty to consider the status of premises licences where reviews have been submitted by Responsible Authorities.

All parties within the licensing process must seek to promote the licensing objectives as defined under the Licensing Act 2003.

The Sub-Committee must consider the application for review of the premises licence and having regard to the application, take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.

OTHER OPTIONS CONSIDERED

Not Applicable - Under the terms of the Licensing Act 2003 this Authority must consider the premises licence review submitted by the Responsible Authority. There is no other option but to undertake and complete the review of the premises licence.

1. BACKGROUND

1.1. Premises Licence Number: PLA040182.

Licence Holder: Plaice on the Park Limited (Mr Shane Harris is the Director of the Company).

Premises: Little Nans Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS.

Designated Premises Supervisor (DPS): The current DPS for the site is Mr Robert S Blyde whose personal licence was issued by Walsall Council. However, the DPS at the time of the submission of the premises licence review was Mr Karl Boneham. The change of DPS was made in November 2023 (see Paragraph 2.6 of this Report below).

- 1.2. This case involves an application for a review of a premises licence (Section 51 of the 2003 Act refers) by the Council's Environmental Health Department. The review relates to the prevention of public nuisance licensing objective. The premise has not been subject of any previous premises licence reviews.
- 1.3. A plan showing the location of the Little Nans Café premises can be found at **Appendix A** of this Report. A plan showing the internal layout of the premises can be found at **Appendix B**. To the front of the premises is an outside area with tables and chairs for the use of patrons and also an outside stage / entertainment area. Photographs, showing the front/outside of the premises, will be supplied to the Sub-Committee on the day of the review hearing.
- 1.4. The premises is currently authorised to undertake the supply of alcohol (for consumption on & off the premises) during 0700 to 2200 Hours. A full extract from the premises licence for the business can be found at **Appendix C** of this Report.
- 1.5. The premises licence for this venue was granted on 08 April 2023. The business operates as a restaurant / café with both inside and outside seating. The business provides live music (including karaoke) and recorded music for the entertainment of customers using the outside seating area at the premises. Guidance to Licensing Authorities has indicated that karaoke is for licensing purposes classed as live music.

2. REPORT

- 2.1. The Licensing Authority has a duty to consider the status of a premises licence where a review has been submitted by a Responsible Authority. This duty has been delegated to the Licensing Sub-Committees of the Full Licensing Act 2003 Committee.
- 2.2. In this case the Environmental Health Team are of the view that the outside entertainment provided at the Little Nans premises is to such noise levels and regularity that in their view it is operating in breach of the prevention of public nuisance licensing objection.
- 2.3. There are licensing exemptions for live music and recorded music. Live amplified music in on-licensed premises authorised and open for the sale of alcohol does not require a premises licence for audiences up to 500 people until 2300 Hours. In addition, live music related premises licence conditions do not apply unless they are imposed at a premises licence review hearing following the removal of the live music exemption. If a beer garden or outside area is not specifically shown on the licensed plans for the premises – then such live music is still likely to be exempt from licensing as such areas will be considered a workplace which also benefits from a similar licensing exemption. Further detailed information, regarding such licensing exemptions, can be found in the note at **Appendix D** of this Report.

- 2.4. The Home Office Guidance indicates that a Licensing Authority may, where justified, impose licence conditions that relate to the performance of music in an outdoor area or beer garden being served by any associated premises licence. The guidance indicates that provided such a condition is lawfully imposed, it takes effect in accordance with its terms.
- 2.5. The Environmental Health Team are seeking the removal of the live music exemption from the premises (specifically the outdoor areas in the vicinity of Little Nan's) and the addition of a licence condition or conditions controlling the provision of outdoor music at the site. Specifically, the Team is asking that the outdoor provision of amplified regulated entertainment be limited to a maximum of 3 days per calendar year.
- 2.6. At the time of the submission of the review application (01 November 2023) the DPS for the site was Mr Karl Boneham. Mr Boneham then removed himself, from the role of DPS on 02 November 2023 and was replaced by Mr Robert Blyde. This Authority is of the view that the main purpose of the DPS is to ensure that there is always one specified individual, among the personal licence holders at a premise, who can be readily identified for the business where the sale of alcohol is permitted. The premises licence holder will normally have given that person day-to-day responsibility for running the premises.
- 2.7. A copy of the application for premises licence review (including the grounds for the review) can be found at **Appendix E** of this Report. The review application is accompanied by supporting documentation and evidence. A copy of the evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. Copies of any evidence pack, submitted by premises licence holder, in support of their case and any additional evidence submitted by the Environmental Health Team, will also be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report.
- 2.8. As required under the terms of the Licensing Act 2003 the review application has been advertised outside the premise, at the Council's Horncastle Offices and on the Council's website, for a period of 28 consecutive days. The Responsible Authorities (e.g. Lincolnshire Trading Standards, Lincolnshire Police, etc.) and other relevant parties were permitted to submit representations regarding the review application. Any representation, made in relation to the review, must relate to one or more of the licensing objectives. The closing date for representations was 30 November 2023.
- 2.9. None of the Responsible Authorities have submitted a representation in relation to the premises licence review. There have been two representations received from Other Parties (e.g. local residents and local businesses) expressing concern regarding noise from the premises. Suitably redacted copies of the representations can be found at **Appendix F** of this Report – signatures, email addresses, telephone numbers and addresses have been removed from the copies. The representations have been received from:
- Mr J Toyne
 - Mr D Broadhurst

Unredacted copies of the representations will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. At the licensing hearing the Licensing Team will provide the Members of the Sub-Committee with a plan showing the location of Mr Toyne's and Mr Broadhurst's residences.

- 2.10. The Licensing Authority has received submissions from persons / customers expressing support for the Little Nans Café. Copies of the submissions supporting the premises will be forwarded to Members of the Sub-Committee, under separate cover, along with the confidential evidence pack.
- 2.11. Home Office Guidance has indicated that a representation from residents, businesses, etc. may be an objection or a positive comment about a premises concerned. However, any positive representation, regarding a premises, must relate to the licensing objectives rather than just being an expression of support for the premises. It is the opinion of the Licensing Team that the submissions detailed in Paragraph 2.10 above are expressions of support for the Little Nans business rather than representations linked to the promotion of the licensing objectives.
- 2.12. **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 G** of this Report, have a bearing upon the premises licence review.
- 2.13. **Local Policy Considerations:** It is considered that the extracts from the Council's Local Statement of Licensing Policy, shown at **Appendix H** of this Report, have a specific bearing upon the premises licence review.

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 review application. Any step taken by the Licensing Authority must be appropriate for the promotion of the licensing objectives. The licensing objectives are detailed in Point 4 of the Legal Implications Section of this Report.
- 3.2. Any amendment to the premises licence must only be taken if the Sub-Committee are persuaded that it is appropriate for the promotion of the licensing objectives to do so.
- 3.3. The Sub-Committee must seek to establish the cause or causes of the concerns that the premises licence review identifies. The remedial action taken should be directed at these causes and should be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

EXPECTED BENEFITS TO THE PARTNERSHIP

Not Applicable.

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

There are no SELCP implications.

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

The processing of this premises licence review is being undertaken as part of the normal duties carried out by the Licensing Team and so there are no staffing implications.

LEGAL IMPLICATIONS

1. The power to review a premises licence is designed to provide the Licensing Authority with a suitable mechanism to tackle problems that may subsequently arise once a premise is licensed.

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

- To modify the conditions of the licence.
- To exclude a licensable activity from the scope of the licence.
- To remove the Designated Premises Supervisor (DPS).
- To suspend the licence for a period not exceeding three months.
- To revoke the licence.

The Sub-Committee may also consider issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time.

3. In addition, if it is considered appropriate to do so the Sub-Committee can make a statement under Section 177A of the Licensing Act 2003 specifically disapplying the live music exemption given to the premises. If the Sub-Committee is minded to remove the live music licensing exemption, then following such removal it would be able to add any appropriate conditions to the premises licence controlling the provision of regulated entertainment at the site.

4. The licensing objectives under the Licensing Act 2003 are:

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

5. The Environmental Health Department, the premises licence holder and the Other Parties 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.

6. 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.

7. If consideration is being given to attaching new or amended conditions to the premises licence, Members should consider, are the proposed conditions:

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

8. 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.

9. The Licensing Authority's determination of the licence review 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

An evidence pack, in relation to the premises licence review, will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. The evidence pack contains personal data and is exempt from publication.

FINANCIAL

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

Representations, regarding the premises licence review, were received from Other Parties within the requisite 28-day period.

REPUTATION

There is a risk that the Council's reputation could be damaged if licensing legislation and guidance are not upheld and applied appropriately.

CONTRACTS

Not Applicable.

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 premise licence holder is entitled to a fair hearing. The right to respect for private and family life, also applies as the "licence" is crucial to the livelihood of the premises licence holder.

The Human Rights of the wider community are also engaged.

Safeguarding Implications: Licensing Authorities must consider the need to protect children and vulnerable persons from exploitation when undertaking licensing functions.

HEALTH AND WELL BEING

Not Applicable.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Not Applicable.

ACRONYMS

DPS - Designated Premises Supervisor

APPENDICES	
Appendices are listed below and attached to the back of the report: -	
APPENDIX A	Location plan of Little Nans Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS.
APPENDIX B	Site Plan of Little Nans Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS.
APPENDIX C	Extract from the current premises licence for Little Nans Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS.
APPENDIX D	Guidance Note regarding the Live Music & Recorded Music Licensing Exemptions.
APPENDIX E	Copy of the Premises Review Application submitted by the Council's Environmental Health Team in respect of Little Nans Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS.

APPENDIX F	Copies of Representations (from Mr Toyne & Mr Broadhurst) in respect of Little Nans Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS.
APPENDIX G	Extracts from the Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003.
APPENDIX H	Extracts from the Local Licensing Policy Statement.

BACKGROUND PAPERS

Background papers used in the production of this report are listed below: -

Document title	Where the document can be viewed
Guidance issued by the Home Office to Licensing Authorities under Section 182 of the Licensing Act 2003	https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003
The Council's Statement of Licensing Policy adopted under the Licensing Act 2003.	https://www.e-lindsey.gov.uk/article/5539/Alcohol-and-Entertainment

CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.

REPORT APPROVAL

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