

REPORT TO:	LICENSING ACT 2003 SUB-COMMITTEE
DATE:	02 FEBRUARY 2024
SUBJECT:	APPLICATION FOR REVIEW OF A PREMISES LICENCE – LA CAFÉ, 1 GRAND PARADE, SKEGNESS, PE25 2UN (MIRCH (2022) LIMITED)
PURPOSE:	This Report considers an application by Mr Victor Fox (of Europa Fisheries Limited and The Factory Rock Shop) for a review of the premises licence held in respect of the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
REPORT OF:	Group Manager Public Protection.
REPORT AUTHOR:	Mr Adrian Twiddy (Principal Licensing Officer)
WARD(S) AFFECTED:	Skegness
EXEMPT REPORT?	<p>The content of this Report is not exempt from publication.</p> <p>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 information relating to a person's business affairs and so is exempt from publication. The evidence pack is not for publication by virtue of Paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972.</p>

SUMMARY

This Report considers an application by Mr Victor Fox (of Europa Fisheries Limited and The Factory Rock Shop) for a review of the premises licence held by Mirch (2022) Limited in respect of the LA Café, 1 Grand Parade, Skegness, PE25 2UN. The review application has been submitted by Mr Fox, acting in his role as an Other Party, under the provisions of Section 51 of the Licensing Act 2003.

The review relates to the public safety licensing objective. The review application expresses concern regarding the safety of the outside first floor balconies at the LA Café premises. Mr Fox is of the view that the use of the balconies is dangerous and compromises the public safety licensing objective. Mr Fox is expressing concerns relating to the structural integrity of the two balcony areas of the LA Café should they be used by patrons of the LA Café.

The application for licence review has attracted one representation from a Responsible Authority – that is the Council's 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.

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 Other Parties or 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 Other Party.

1. BACKGROUND

1.1. Premises Licence Number: PLA008445.

Licence Holder: Mirch (2022) Limited (Mr Tajinder Singh is the Director of the Company).

Premises: LA Café, 1 Grand Parade, Skegness, PE25 2UN.

Designated Premises Supervisor (DPS): The current DPS for the site is Mr Tajinder Singh whose personal licence was issued by this Authority in 2011.

Licence Holder's Representative: Mr Michael Kheng of Kurnia Licensing Consultants.

Review Applicant's Representative: Mr Victor Fox (the person submitting the review application) will be represented at the licence review hearing by Mr Grant Shackleton of Chattertons Legal Services Limited.

- 1.2.** This case involves an application for a review of a premises licence (Section 51 of the 2003 Act refers) by Mr Victor Fox (of Europa Fisheries Limited and The Factory Rock Shop) acting as an Other Party. The review relates to the public safety licensing objective.
- 1.3.** A plan showing the location of the LA 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**. Photographs, showing the front of the premises and the immediate surrounding area of the premises, will be available for Members of the Sub-Committee on the day of the hearing.
- 1.4.** The premises is currently authorised to undertake the supply of alcohol (for consumption on & off the premises) and provide regulated entertainment during 0900 to 0400 Hours. A full extract from the premises licence for the business can be found at **Appendix C** of this Report. The premises licence was subject of a premises licence variation supplication that was granted in October 2023. The aforementioned application varied the conditions attached to the licence and the up-to-date conditions (resulting from the variation application) can be found within **Appendix C** of this Report.
- 1.5.** The venue was first granted a premises licence, by this Authority, in 2005. Prior to that the venue held a Justices Licence with the Magistrates Court. The venue is a first-floor bar / nightclub venue within the busy night-time economy area of Skegness – however, the premise has been closed since March 2020. The premises closed when the nationwide Covid restrictions / lockdown came into place and has not reopened since. However, the Licensing Team are given to understand that there is now a wish by the premises licence holder to reopen the venue.
- 1.6.** There are two outside balconies at this first-floor venue. The balconies overlook the busy Grand Parade and Lumley Road area of Skegness and are subject to the following condition on the current premises licence:
- The maximum number of people permitted on the Grand Parade balcony is 60 & the maximum number of people permitted on the Lumley Road balcony is 60.*
- 1.7.** The above condition was placed on the existing premises licence by a Consent Order issued by the Magistrates Court on 26 June 2012 following a premises licence appeal to the Court. The Licensing Team are given to understand that the occupancy figure was calculated by the premises licence holder following consultation with Lincolnshire Fire & Rescue.

2. REPORT

- 2.1.** The Licensing Authority has a duty to consider the status of a premises licence where a valid review has been submitted by an Other Party. This duty has been delegated to the Licensing Sub-Committees of the Full Licensing Act 2003 Committee.
- 2.2.** The review application submitted by Mr Victor Fox relates to the public safety licensing objective. His submission expresses concern regarding the safety of the outside balconies at the LA Café premises. He is of the view that the balconies are not structurally safe to withstand the weight of the capacity given in the premises licence condition. Mr Fox is of

the view that the use of the balconies is dangerous and compromises the public safety licensing objective.

- 2.3. Persons, known under the terms of the Licensing Act 2003 as 'Other Parties', can apply to the Council at any time for a review of a premises licence. An Other Party would normally be anyone who is affected by activity at the licensed premises in question. The submission of a review is a request for the Licensing Authority to look at an existing licence and decide whether its conditions are adequate to meet the licensing objectives defined under the 2003 Act. This is because premise licences normally last for the lifetime of the business and would not otherwise be subject to review by the Licensing Authority. The licence review request must not be frivolous, repetitious or vexatious.
- 2.4. In this particular case Mr Fox, in his role as an Other Party, is acting as a person involved in two businesses in the vicinity of the licensed premises.
- 2.5. A copy of the application for premises licence review (including the grounds for the review) can be found at **Appendix D** 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. A copy of any evidence pack, submitted by premises licence holder, will also be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report.
- 2.6. 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 15 January 2024.
- 2.7. The Council's Environmental Health Department have submitted a representation in relation to the premises licence review – the representation can be found at **Appendix E** of this Report. There have been no representations received, regarding the review application, from Other Parties (e.g., local residents and local businesses).
- 2.8. The Environmental Health representation expresses concern relating to the structural integrity of the two balcony areas of the LA Café should they be used, when the premises reopens, without the prior submission of a report which conclusively determines the safe load bearing capacity of the structures.
- 2.9. **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 F** of this Report, have a bearing upon the premises licence review.
- 2.10. **Local Policy Considerations:** It is considered that the extracts from the Council's Local Statement of Licensing Policy, shown at **Appendix G** 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 3 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. 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

4. The Other Party, Environmental Health Department and the premises licence holder 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.

5. 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.

6. 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.

7. 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.

8. 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 business information 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

The representation, regarding the premises licence review, was received from the Environmental Health Team 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 the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
APPENDIX B	Site Plan of the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
APPENDIX C	Extract from the current premises licence for the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
APPENDIX D	Copy of the Premises Review Application submitted in relation to the LA Café, 1 Grand Parade, Skegness, PE25 2UN.
APPENDIX E	Copy of the Representation submitted by the Environmental Health Team.
APPENDIX F	Extracts from the Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003.
APPENDIX G	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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