

Report to:	Licensing Sub-Committee	Date of Meeting:	13 May 2022
Subject:	Licensing Act, 2003 – Summary Review Parnells, 62 South Road, Waterloo L22 0LY		
Report of:	Head of Highways and Public Protection	Wards Affected:	Church
Portfolio:			
Is this a Key Decision:	N	Included in Forward Plan:	N
Exempt / Confidential Report:	No - but parts of Annexes 1 and 2 and all of Annexes 3 and 4 to the report are NOT FOR PUBLICATION by virtue of Paragraphs 1, 2 and 7 of Part 1 of Schedule 12A of the Local Government Act 1972. The Public Interest Test has been applied and favours the information being treated as exempt		

Summary:

To determine an application for summary review of a Premises Licence received from Merseyside Police

Recommendation(s):

The Sub-Committee's instructions are requested.

Reasons for the Recommendation(s):

Under the Scheme of Delegation Officers cannot determine applications which have received relevant representations.

Alternative Options Considered and Rejected: (including any Risk Implications)

N/A

What will it cost and how will it be financed?

(A) Revenue Costs

There are no financial costs associated with the proposals in this report

(B) Capital Costs

There are no financial costs associated with the proposals in this report

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):

There are no financial implications arising directly from this Report except in the event of any Appeal made against the Sub-Committee's eventual decision, the costs of which would depend upon the length of the Appeal process.

Legal Implications:

The Chief Legal and Democratic Officer will provide legal advice to the Licensing Sub Committee on the issues set out in this report.

Equality Implications:

There are no equality implications.

Contribution to the Council's Core Purpose:

The Sub-Committee is acting in an administrative capacity under the Licensing Act 2003.

What consultations have taken place on the proposals and when?

(A) Internal Consultations

Consultation has taken place as per the provisions of the Licensing Act 2003.

(B) External Consultations

Consultation has taken place as per the provisions of the Licensing Act 2003.

Implementation Date for the Decision

Any decision taken at the Summary Review hearing by the Sub-Committee will not take effect until the period within which an appeal can be brought has passed (21 days), and then following which until the determination of any such appeal.

Contact Officer:	Kevin Hogan
Telephone Number:	0151 934 2887
Email Address:	Kevin.hogan@sefton.gov.uk

Appendices:

Annex 1 – Existing Premise Licence.

Annex 2 – Summary Review application and accompanying documentation.

Annex 3 – Evidence submitted by Merseyside Police.

Annex 4 – Evidence submitted by the Premise Licence holder.

Background Papers:

There are no background papers available for inspection.

1. Review details

<u>Applicant:</u>	Sgt Craig Carmichael, Merseyside Police Licensing
<u>Applicable Premises:</u>	Parnells 62 South Road Waterloo, L22 0LY
<u>Ward:</u>	Church
<u>Premises Licence Holder:</u>	Mr Michael Palombella
<u>Premises Representative:</u>	Mr David Henderson, HSADD Limited

1.1 GROUNDS FOR REVIEW

At 23.00 hrs on Wednesday 13 April 2022 an incident of disorder occurred at the premises. A male known to the Police is ejected with excessive force used. The male returns to the premises with a knife, two door supervisors run inside the premises one of them retrieves a hand gun from a bag just inside the entrance and points it to the chest of the male with the knife. A fight continues between this male and a number of door supervisors. The level of force used by the door supervisors is excessive prior to this male making good his escape. Merseyside Police have great concerns regarding the management of these premises, the door staff involved and the customers it attracts with regard to crime and disorder and public safety.

2. Details of premises licence

Licensable activities applicable:

- The sale of alcohol by retail (on and off the premises);
- The provision of regulated entertainment - recorded music;
- The provision of regulated entertainment - entertainment of a similar description to that falling within the category of live music, recorded music, or performance of dance:

Days of Operation	Hours of Operation
Monday to Sunday	10.00 to 02.30

Hours premises to be open to public:

Days of Operation	Hours of Operation
Monday to Sunday	10.00 to 02.30

- 2.1 The Premises Licence in respect of this establishment was originally determined on 16/09/2005, a copy of which is to be found within Annex 1 of this Report.

3. Supporting evidence submitted

3.1 Merseyside Police have produced a number of documents, as supporting evidence and these can be found within Annex 3.

3.2 The Premise Licence holder has also produced a number of documents, as evidence and these can be found within Annex 4.

4. Interim steps

4.1 On 21/04/2022 the Sub-Committee considered whether it was necessary to take interim steps pending the determination of the Summary Review.

4.2 At the Meeting the Sub-Committee resolved that:

- 1) the Premise Licence conditions be modified to include the following condition:
 - At all times when the premises operates for licensable activities there shall be a minimum of two members of staff present on the premises at any one time in addition to any door supervisor staff.
- 2) the Licensing Sub-Committee be reconvened to conduct a Summary Review of a Premises Licence under Section 53A of the Licensing Act 2003 on 13/05/2022 at 2:30pm at Southport Town Hall for the full review hearing.

5. Objections/representations received

5.1 The review application was served upon the Licensing Authority by Sergeant Craig Carmichael (on behalf of Superintendent Graeme Robson) on 19/04/2022.

5.2 The Summary Review application form and the accompanying certificate are attached within Annex 2 to this Report.

5.3 As required under the Act the Licensing Unit has:

- served copies of the application on all the Responsible Authorities; and,
- caused the Notice of Summary Review to be displayed near the premises in question, at both Southport and Bootle Town Halls and on the Sefton website for no less than 7 consecutive days.

5.4 The consultation period for the review ended on 04/05/2022; no further representations have been received as a result of 5.3 above.

6. Additional licensing information

6.1 The Summary Review process allows:

- the police to trigger a fast track process to review a Premises Licence where they consider that the premises are associated with serious crime or serious disorder (or both); and

- the Licensing Authority to respond by taking interim steps quickly, where appropriate, pending a full review.
- 6.2 The local chief officer of police may apply to the Licensing Authority for an expedited review of a Premises Licence where a senior police officer has issued a certificate stating that in his/her opinion the premises are associated with serious crime or serious disorder (or both).
- 6.3 Pending the determination of the Summary Review, the Licensing Authority has to consider, within 48 hours of receiving the application (excluding those hours which fall on non working days), whether it is necessary to take interim steps pending the determination of the Review (the Authority must undertake the review within 28 days of receipt of the application). This consideration may take place without the Premise Licence Holder being given the opportunity to make any representations on his/her behalf. Details of these matters are contained within 3.0 above.
- 6.4 The Sub-committee must hear the review within 28 days of receiving the Police's application. The hearing must take place even if the Police ask to withdraw the application or representations. Interested parties or responsible authorities can make representations in relation to any of the licensing objectives, not just crime and disorder.
- 6.5 With regard to any interim steps that may still be in force, the Sub-committee must:
- (a) consider whether the interim steps are appropriate for the promotion of the licensing objectives;
 - (b) consider any relevant representations; and
 - (c) determine whether to withdraw or modify the interim steps taken.
- 6.6 In respect of the review itself, the action the licensing authority can take is as follows:
- the modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
 - the removal of the designated premises supervisor from the licence;
 - the suspension of the licence for a period not exceeding 3 months; and
 - the revocation of the licence.
- 6.7 Modification of the conditions of the Premises Licence can include altering or modifying existing conditions or adding any new conditions, including those that restrict the times at which licensable activities authorised by the Licence can take place.
- 6.8 Paragraph 11.20 of the Guidance, issued under Section 182 of the Act, states that in *In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an*

appropriate and proportionate response to address the causes of concern that instigated the review.”

6.9 The Licensing Act 2003 at Paragraph 52 (11) states:

“Determination under this section does not have effect-

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

6.10 Schedule 5 of the Act, Paragraph 9 (2) states that an “appeal under this Part must be commenced by notice of appeal given by the appellant to the justices' chief executive for the magistrates' court within the period of 21 days...”

6.11 Therefore any decision taken at the Summary Review hearing by the Sub-Committee will not take effect until the period within which an appeal can be brought has passed, and then following which until the determination of any such appeal.

6.12 However, any interim steps previously imposed will remain in force during this period if they have not been withdrawn by the Sub-Committee.

7. Section 53A Licensing Act 2003 Summary Review Guidance issued by the Home Office – August 2012.

7.1 Paragraph 2.4 of the above Guidance states that “*In deciding whether to sign a certificate, the senior officer will want to consider the following (as applicable):*

- *The track record of the licensed premises concerned and whether the police have previously had cause to give advice about serious criminal or disorderly conduct (or the likelihood of such conduct) attributable to activities taking place on the premises – it is not expected that this power will be used as a first response to a problem.*
- *The nature of the likely crime and/or disorder – is the potential incident sufficiently serious to warrant using this power?*
- *Should an alternative power be deployed? Is the incident sufficiently serious to warrant use of the powers in sections 161 to 165 of the 2003 Act to close the premises? Or could the police trigger a standard licence review to address the problem? Alternatively, could expedited reviews be used in conjunction with other powers (for example, modifying licence conditions following the use of a closure power).*
- *What added value will use of the expedited process bring? How would any interim steps that the licensing authority might take effectively address the problem?”*

7.2 Paragraph 2.5 continues that “*It is recommended that these points are addressed in the chief officer's application to the licensing authority. In particular, it is important to explain why other powers or actions are not considered to be appropriate. It is up to the police to decide whether to include this information in the certificate or in section 4 of the application for summary review. The police will*

also have an opportunity later to make representations in relation to the full review.”

- 7.3 Paragraph 3.2 states that *“The licensing authority may want to consult the police about the steps that it thinks are appropriate, pending the determination of the review, to address the immediate problems with the premises, in particular the likelihood of serious crime and/or serious disorder. The licensing authority may consider the interim steps without the holder of the premises licence having been given an opportunity to make representations. This does not, of course, mean that the licensing authority cannot afford such an opportunity if it thinks it appropriate and feasible to do so in all the circumstances.”*
- 7.4 Paragraph 3.6 indicates that *“The licensing authority, in deciding when its decision on interim steps should take effect, should consider the practical implications of compliance in relation to the premises. For example to comply with a modification of the conditions of a licence that requires employment of door supervisors, those running the premises may need some time to recruit appropriately qualified and accredited staff.”*
- 7.5 Paragraph 3.7 goes on *“In addition, very careful consideration needs to be given to interim steps which would require significant cost or permanent or semi-permanent adjustments to premises which would be difficult to remove if the outcome of the subsequent full review was to withdraw or modify those steps. For example, making structural changes, installing additional CCTV or replacing all glassware with safer alternatives may be valid steps, but might be disproportionate if they are not likely to be deemed necessary following the full review (or any subsequent appeal). The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring. In some circumstances, it might be better to seek suspension of the licence pending the full review, rather than imposing a range of costly conditions or permanent adjustments.”*

8. Sefton’s Statement of Licensing Policy

8.1 PREVENTION OF CRIME & DISORDER

Paragraph 3.5 states that when making licence applications, in providing evidence within the Operating Schedule that suitable and sufficient measures will be in place to address the Crime and Disorder objective, applicants should consider the following matters in particular:

- The capability of the person in charge to ensure effective and responsible management of the premises;
- The training given to staff in crime prevention measures;
- Procedures for risk assessing promotions and events, such as ‘happy hours’ in relation to crime and disorder, and the plans to minimise such risks;
- Adoption of best practice in relation to safer clubbing etc;
- Physical security features installed in the premises (i.e. location and standard of CCTV equipment, toughened drinking glasses etc);

- Measures to prevent the supply of illegal drugs, including search and entry policies;
- Employment of SIA licensed door supervisors;
- Participation in an appropriate crime prevention scheme (e.g. 'pubwatch');
- Measures to be taken for the prevention of violence and disorder;
- The presence, or access to, sufficient transport facilities to ensure that customers can leave the premises safely and swiftly;
- Weapon detection and search facilities;
- Illegal sale of alcohol to those who are already drunk;
- Participation in any existing radio network scheme

8.2 PUBLIC SAFETY

Paragraph 3.7 advises applicants when making licence applications, in providing evidence within the Operating Schedule that suitable and sufficient measures will be in place to address the Public Safety objective, to consider the following matters in particular:

- The safe occupancy capacity of the premises, in particular having regard to floor area and means of escape;
- The age, design and layout of the premises, including the means of escape;
- The nature of the licensable activities provided, in particular the sale of alcohol;
- Hours of operation;
- Customer profile (age, disability etc);
- The necessary Health and Safety and Fire risk assessments for the premises, and other measures to reduce risk to public safety;
- The number of people employed or engaged to secure the safety of all persons attending the premises or event;
- Where appropriate, noise exposure controls, for both staff and public, which have been detailed in accordance with the appropriate legislation;
- Arrangements to ensure that litter, generated by activities at the premises, does not present a fire hazard;
- Implementation of appropriate crowd management measures

9. Guidance Issued under Section 182 of the Licensing Act 2003

9.1 PREVENTION OF CRIME & DISORDER

Paragraph 2.1 states that the *"Licensing authorities should look to the police as the main source of advice on crime and disorder."*

Paragraph 2.2 states that in the exercise of their functions *"licensing authorities should seek to co-operate with the Security Industry Authority ("SIA") as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police,*

local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.”

Paragraph 2.3 states that Conditions “be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.”

Paragraph 2.4, with regard to radio links and ring-round phones systems, states that these “should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.”

Paragraph 2.5 states that “Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.”

Paragraph 2.6 underlines that the “prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.”

9.2 PUBLIC SAFETY

Paragraph 2.7 states that under the Act “Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather

than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene."

Paragraph 2.8 underlines that a "number of matters should be considered in relation to public safety. These may include:

- *Fire safety;*
- *Ensuring appropriate access for emergency services such as ambulances;*
- *Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts...;*
- *Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;*
- *Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);*
- *Ensuring appropriate and frequent waste disposal, particularly of glass bottles;*
- *Ensuring appropriate limits on the maximum capacity of the premises...; and*
- *Considering the use of CCTV in and around the premises."*

Paragraph 2.11 underlines that "Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules."

With regard to safe capacities Paragraph 2.12 states that they "should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new

capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.”