

## **Report for:                      Licensing Panel**

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<b>Date of Meeting:</b>	13 June 2023
<b>Subject:</b>	Application for a review of the premises licence for Seán Óg, 108 High Street, Wealdstone, Harrow, HA3 7AH.
<b>Responsible Officer:</b>	Dipti Patel, Corporate Director, Place
<b>Exempt:</b>	No
<b>Wards affected:</b>	Wealdstone South
<b>Enclosures:</b>	Appendix 1 - Application for Review  Appendix 2 - Current Premises Licence and Plan  Appendix 3 - Representations  Appendix 4 - Relevant Section of the Statement of Licensing Policy  Appendix 5 - Relevant Section of the Statutory Guidance  Appendix 6 - Location Map and Image of the Premises

### **Section 1 – Summary**

This report asks the Panel to consider the application for a Review received from the Metropolitan Police Service under s.51 of the Licensing Act 2003 (“the Act”).

The application relates to Seán Óg, 108 High Street, Wealdstone, Harrow, HA3 7AH.

The review has been submitted as a result of undermining the licensing objectives of prevention of crime and disorder and public safety.

## **Section 2 – Report**

- 2.1 An application has been received on behalf of the Metropolitan Police Service under s.51 of the Licensing Act 2003 (“the Act”) to review the premises licence for Seán Óg, 108 High Street, Wealdstone, Harrow, HA3 7AH., currently held by Paul Martin Nee.
- 2.2 The Licensing Objectives to which the review applications relate to are:
- Prevention of Crime and Disorder;
  - Public Safety;
- 2.3 The Metropolitan police have submitted the review following ongoing issues with the premises which they have previously sought to resolve informally. Including:
- 13 August 2018, Officer witnessed issued with the CCTV system
  - 05 January 2019, A written warning issued in relation to issues with the CCTV recording system and refusals log
  - 31 January 2020, a further written warning for issues with the CCTV system
  - 24 February 2022, a final warning issued for conducting alleged licensable activities without a valid authorisation (trading past their licensed hours).
- 2.4 On 11 March 2023 a serious incident of violence took place inside the premises. This incident occurred after the premises should have been closed according to the licence conditions and included evidence from parties that licensable activities were alleged to be occurring after the permitted hours.
- 2.5 The Application to review the premises licence was received on the 6 April 2023. The application has been advertised in accordance with the prescribed regulations

### Description of premises

- 2.6 The premises are located on the busy highway of High Street, Wealdstone. The premises is a public house which conducts its main business from the ground floor and it is also advertising that it has a rooftop garden
- 2.7 An image of the premises and a location map are provided at Appendix 6.

## Licensing history

- 2.8 A premises licence was first granted in 2005 by way of a conversion application made under the transitional provisions under the Act. The licensing authority received an application to transfer the licence and to vary the designated premises supervisor to Mr Paul Martin Nee on 7 August 2017. After this time, no further applications have been received.
- 2.9 The current premises licence including operating hours, conditions and plan are attached at Appendix 2.

## Representations

- 2.10 The authority has received one representation from Alan Riley, Licensing Officer on behalf of the Licensing Authority in its capacity as a responsible authority. The representation is based on the undermining of the prevention of crime and disorder, the prevention of public nuisance and the public safety objectives.
- 2.11 The representation explains that the metropolitan police and Licence Authority have issued warnings to the current licence holder regarding the undermining of licensing objectives and breach of conditions. The representation shows additional history including a letter of warning in 2017 shortly after transfer of the licence. The warning letter is attached to his representation under AR1.
- 2.12 The Licensing Officer states that despite several attempts made by two responsible authorities, the licence holder has consistently failed to comply with requirements.
- 2.13 Due to consistent failures, and lack of confidence in the licence holder and the bar manager, the Licensing Officer recommends that the Committee consider revocation of the licence.

## Officer observations

- 2.14 The applicant alleges that during several visits by the police to ensure compliance, the licensee has not been able to uphold one or more of the four licensing objectives. That licensing objectives are being undermined and conditions are not being complied with (including the times for licensable activities and hours open to public). This is despite trying to work with the licence holder on several occasions and issuing warning letters.
- 2.15 The applicant has put forward conditions that may be considered appropriate to be placed on the licence if the Panel is minded to consider this as an appropriate option. They also suggest a reduction in hours. The Licensing Officer's representation identifies further history with the premises and suggests that if the Panel are minded; that revocation of the licence should be considered.

- 2.16 It is noted by officers that during the latest incident of grievous bodily harm that took place at the premises, Mr Nee was not present. The incident took place beyond the hours authorised by licence. As the premises was still trading after authorised hours, this is a breach of Part 7 - s.136 (unauthorised licensable activities) of the Act.
- 2.17 The Panel must, having regard to the application and any relevant representations, determine the appropriate outcome for the hearing which may include:
- to modify the conditions of the licence;
  - to exclude any of the licensable activities from the scope of the licence;
  - to remove the designated premises supervisor;
  - to suspend the licence for a period not exceeding 3 months;
  - to revoke the licence
  - to allow the licence to remain in its existing state
- 2.18 Under the Act, if the Panel takes a step under (a) or (b above), it may specify that the modification or exclusion is to have effect for a period up to three months if it considers this to be appropriate.

#### Licensing policy

- 2.19 In considering the Application for Review as set out in Appendix 1, the Panel will consider the relevant section for reviews in the statement of licensing policy attached to this report at Appendix 4. The Panel has discretion to depart from the guidelines, which are designed with consistency and transparency of decision-making in mind.

#### Statutory guidance

- 2.20 Paragraph 10.27 of the Statutory Guidance (December 2022) under section 182 of the Act states in part:

*“The main purpose of the ‘designated premises supervisor’ as defined in the 2003 Act is to ensure that there is always one specified individual among these personal licence holders who can be readily identified for the premises where a premises licence is in force. That person will normally have been given day to day responsibility for running the premises by the premises licence holder...”*

- 2.21 The whole of Section 11 of the Statutory Guidance (December 2022) which covers reviews is attached to this report at Appendix 5.
- 2.22 In addition to determining the application in accordance with the legislation, Members must have regard to the –
- Common law rules of natural justice (i.e. ensuring a fair and unbiased hearing etc.);
  - Provisions of the Human Rights Act 1998;
  - Considerations in section 17 of the Crime and Disorder Act 1998.

2.23 The Panel must also act appropriately with regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms implemented under the Human Rights Act 1998, particularly articles 6 (relating to the right to a fair trial); article 8 (protection of private and family life); and article 1 of the First Protocol (protection of property).

2.24 The Panel, when exercising its powers, must consider section 17 of the Crime and Disorder Act 1998 which states:

*'without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.'*

2.25 Full copies of the Council's Statement of Licencing Policy, hearing procedure and statutory guidance to the Act will be available at the Panel Hearing or in advance if so required.

### **3. Alternative Options considered**

3.1 Not applicable.

### **4. Legal Implications**

4.1 The Licensing Authority is required to hold a hearing to consider the review application and any relevant representations made. The hearing must be held in accordance with the Act and the Licensing Act 2003 (Hearings) Regulations 2005.

4.2 The Licensing Panel is required to give appropriate weight to the review application, representations (including supporting information) presented by all the parties, the Guidance issued pursuant to section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy and the steps (if any) that are appropriate to promote the four licensing objectives

4.3 The Licensing Panel shall determine the application in accordance with S.52 of the Act.

4.4 The Panel should also note:

- clear reasons must be given for the decision.
- any additional or modified conditions should be practicable and enforceable.

4.5 The applicant for the review, the premises licence holder and any person who made relevant representations would have the right of appeal to a magistrates' court on one of the grounds provided in schedule 5 to the Act.

## 5. Financial Implications

5.1 There are no financial implications, other than a small fee income if the new licence is granted.

## Risk Management Implications

Risks included on corporate or directorate risk register? **No**

Separate risk register in place? **No**

The relevant risks contained in the register are attached/summarised below. **No**

The following key risks should be taken into account when agreeing the recommendations in this report:

<b>Risk Description</b>	<b>Mitigations</b>	<b>RAG Status</b>
Failure to determine the application for a review of the premises licence would put the Licensing Authority in breach of its obligations under the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005.	<ul style="list-style-type: none"><li>The Authority must determine this application within the timescales set by prescribed regulations</li></ul>	Green

## Section 3 - Statutory Officer Clearance

### Statutory Officer:

Signed on behalf of the Chief Financial Officer

Jessie Man

**Date: 09 May 2023**

### Statutory Officer:

Signed on behalf of the Monitoring Officer

Baljeet Virdee

**Date: 22 May 2023**

### Chief Officer:

Signed by the Director of Environmental Services

Cathy Knubley

**Date: 12 May 2023**

## **Mandatory Checks**

Ward Councillors notified: YES

### **Section 4 - Contact Details and Background Papers**

**Contact:** Emma Phasey, Head of Licensing and Enforcement, emma.phasey@harrow.gov.uk

**Background Papers:**

**Licensing Act 2003**

**<https://www.legislation.gov.uk/ukpga/2003/17/contents>**

**The Licensing Act 2003 (Hearings) Regulations 2005**

**<https://www.legislation.gov.uk/uksi/2005/44/contents/made>**

**Licensing Act 2003 Statutory Guidance (issued December 2022).**

**[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1125660/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_December\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125660/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_December_2022.pdf)**