

Gloucester City Council

Meeting:	Licensing Sub-Committee	Date:	13th May 2015
Subject:	Application for the review of a premises Licence under Section 51 of the Licensing Act 2003 for Minx Club, 12-16 Quay Street Gloucester, GL1 2JS		
Report Of:	Gill Ragon – Public Protection		
Wards Affected:	Westgate		
Contact Officer:	Lisa Jones – Food, Licensing and Markets Manager		
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Appendices:	1. Current Premises Licence		
	2. Location Plan		
	3. Application for Review		
	4. Representation from Gloucestershire Constabulary		
	5. Section 182 Guidance on Premises Licence Reviews		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 To determine an application for review of a Premises Licence made under Section 51 of the Licensing Act 2003 in respect of Minx, 12-16 Quay Street, Gloucester, GL1 2JS.

2.0 Recommendations

- 2.1 Licensing and Enforcement Sub-Committee is asked to consider the application having regard to the representations and with reference to the Councils statement of licensing policy and revised guidance issued under section 182 of the Licensing Act 2003 and asked to **RESOLVE** one of following determinations:
- a) To take no further action
 - b) To issue an informal warning to the licence holder, recommending improvements within a particular period of time
 - c) To modify the conditions of the licence, by altering, omitting or adding to them, where relevant;
 - d) To exclude a licensable activity from the scope of the Licence;
 - e) To remove the designated premises supervisor
 - f) To suspend the Licence for a period not exceeding three months; or
 - g) To revoke the Licence.
 - h) Adjourn the hearing to a specified date or arrange for a hearing to be held on specified additional dates, where Members consider this to be a necessary for its consideration of any representations or notice made by a party.

3.0 Background and Key Issues

- 3.1 Minx Club is located on Quay Street, Gloucester and was granted a Premise Licence in November 2010. It has the benefit of a Premises Licence for which authorises the use of the premises for the sale of alcohol, regulated entertainment and the provision of late night refreshment. A location plan can be found in **Appendix 2**. The current Premise Licence Holder, Mr Alan Whitehead has held the licence since November 2010. The existing licence is attached at **Appendix 1**.
- 3.2 Section 51 of the Licensing Act 2003 states that where a Premises Licence has effect, other persons or a responsible authority may apply to the relevant licensing authority for a review of the licence.
- 3.3 The Police, Reform and Social Responsibility Act 2011 amended the Licensing Act 2003 where local licensing authorities are included in the definition of a Responsible Authority. Therefore, the Council acting as responsible authority may apply for a review where it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons.
- 3.4 In respect of an application for a review from Other Persons or a Responsible Authority, the Licensing Authority may only reject the application if the grounds are not relevant to one or more of the Licensing Objectives which are:-
- The Prevention of Crime and Disorder
 - Public Safety
 - The Prevention of Public Nuisance
 - The Protection of Children from harm

4.0 The Application for Review

- 4.1 On 17th March 2015 an application to review the Premises Licence at Minx Club was made by Darren Brice, Licensing and Enforcement Officer, Licensing Team, Gloucester City Council. The application is attached as **Appendix 3**.
- 4.2 The grounds cited in the review application are:-
- The Prevention of Crime and Disorder
 - Public Safety
- 4.3 The conditions currently attached to the licence are those consistent with the operating schedule. On several occasions' breaches of licensing conditions have been witnessed and evidenced, which is the reason for this premise licence review. These breaches relate to the operation of CCTV in the premise because the images were of poor quality, they did not cover all areas accessible to the public, there was not a person available at the premises to technically operate the CCTV and the CCTV footage was not held on record for 31days as required. The licence holder also failed to provide CCTV footage to the Police within 24 hours of their request.
- 4.4 Breaches have also been witnessed relating to the provision of SIA registered doormen because authorised officers have never witnessed more than one SIA registered doorman present at the Club, yet the premises licence requires a minimum of three to be present.

4.5 In accordance with the Licensing Act 2003, the review notice was displayed on the Premises, at the Local Authority offices and on Gloucester City Council's website.

5.0 Representations

5.1 All Responsible Authorities under the terms of the Licensing Act 2003 have been consulted in respect of this review application; one representation has been received by Gloucestershire Constabulary. Their representation is attached as **Appendix 4**.

5.2 Since the application for review has been lodged, the Licensing Team has continued to work with the Police and the manager of Club Minx (Ross Connock) to resolve the issues concerning the management of the Club. Progress has been made to address the breaches of their licence conditions concerning the provision of CCTV and SIA registered door staff, however, at the time that this report was written these licence conditions were not fully complied with.

5.3 Licensing and Enforcement Officers continue to monitor compliance at the Club and will provide a verbal update of the progress made to date during the hearing for Members consideration.

6.0 The Licensing Policy Statement and Guidance

6.1 In making its decision, the Sub-Committee is also obliged to have regard to the Council's Licensing Policy Statement and Revised Guidance issued under Section 182 of the Licensing Act 2003. A copy of the guidance relating to Premises Licence Reviews can be found in **Appendix 5**.

6.2 The Home Office Guidance to the Licensing Act states at Chapter 11:

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

11.18 Where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;

- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

7.0 Conclusions

7.1 The Sub-Committee is obliged to determine this application with a view to promoting the four licensing objectives which are:-

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from harm

7.2 The Sub-Committee must also have regard to all of the representations made and evidence it hears.

7.3 In deciding whether to apply any of the steps listed in paragraph 6.2, chapter 11.19 of this report the Licensing Authority should, so far as possible, seek to establish the cause of the concerns that the representations identify.

7.4 If remedial action is to be taken it should be directed at the cause of the identified problem and should always be no more than a necessary and proportionate response.

7.5 In reviewing a premises licence the Licensing Authority is required to have regard to the application made, any relevant representations and the recommendations referred to in section 2 of this report.

8.0 Financial Implications

8.1 If an appeal is made to the Magistrates' Court by any of the parties involved, against the decision of the Sub-Committee, should the appeal be successful then the magistrates may make an order for costs against the local authority.

(Financial Services have been consulted in the preparation this report.)

9.0 Legal Implications

9.1 The application must be determined within 5 working days of the conclusion of the hearing in accordance with paragraph 26 (2) of the Licensing Act (Hearing) Regulations 2005.

- 9.2 Where an authority has adjourned a hearing to a specified date or to be held on a specified additional date, it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.
- 9.3 Where an application for a review of a Premises Licence is decided under Section 52 of the Licensing Act 2003, an appeal may be made against that decision by –
- (a) the applicant for the review,
 - (b) the holder of the premises licence, or
 - (c) any other person who made relevant representations in relation to the application.
- 9.4 These parties may appeal against the decision, to the Magistrates Court within 21 days of being notified of the decision.
- 9.5 In considering the application, the Sub-committee is solely performing the role of Licensing Authority. The Sub-committee sits in a quasi-judicial capacity and must act impartially. It must offer a fair and unbiased hearing of the application. The Sub-committee needs to disregard the wider Council objectives and other statutory roles and must direct themselves to making a determination solely based on the licensing law, Guidance and the Council's Statement of Licensing Policy.
- 9.6 As a quasi-judicial body, the Sub-committee is required to consider the application on its merits. It must take into account only relevant factors and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant
- 9.7 Under the Human Rights Act 1998, the Sub-committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision.

10.0 Risk & Opportunity Management Implications

- 10.1 The risk of an appeal to Magistrates with costs implications or Judicial Review should inappropriate decisions be made or the regulatory procedures not be followed.

11.0 People Impact Assessment (PIA):

A PIA screening assessment has been undertaken and the impact is neutral. A full PIA is not required.

Any Further Relevant Information:

None

12.0 Other Corporate Implications

Community Safety

12.1 The four objectives of the Licensing Act 2003 are designed to support the community safety aspects and are dealt with within the body of the report.

Sustainability

12.2 None

Staffing & Trade Union

12.3 None

Background Documents:

Gloucester City Council Licensing Hearing Procedure

Licensing Act 2003

Licensing Act 2003 (Hearings) Regulations 2005

Gloucester City Council Licensing Policy Statement

Home Office Guidance issued under Section 182 of the Licensing Act 2003