

PART A

Report to: Licensing Sub-Committee
Date of meeting: Tuesday 25 November 2014
Report of: Head of Community and Customer Services
Title: Application for Review of a Premises Licence
Jimmy's World Grill & Bar, 134 High Street, Watford WD17 2EN
14/01268/LAINPT

1.0 SUMMARY

- 1.1 An application for a review of a Premises Licence has been received from Collette Fahy (a local resident) in respect of Jimmy's World Grill & Bar, 134 High Street, Watford WD17 2EN.

The application is made on the grounds that the premises are undermining the licensing objective of the prevention of public nuisance.

Three representations have been received in support of the review from interested parties.

2.0 RECOMMENDATIONS

- 2.1 That the Licensing Sub-Committee determines with reasons which, if any, actions available to it as detailed in this report are appropriate for the promotion of the licensing objectives.

Contact Officer:

For further information on this report please contact:
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Report approved by: Alan Gough, Head of Community and Customer Services

3.0 APPLICATION

3.1 Type of application

Application for a review of a Premises Licence under section 51 of the Licensing Act 2003.

3.2 The review application is attached at appendix 1.

3.3 Description of premises

The premises are a restaurant (as defined in Policy LP1 of Watford Borough Council's statement of licensing policy) located within the Town Centre. There are residential properties above and behind the development. The customer entrance to the property is from the High Street. Deliveries and collections are made via a rear yard which is accessed from Smith Street.

3.4 A map of the location of the premises is attached at appendix 2.

3.5 A plan of the premises is attached at appendix 3.

3.6 Licensable activities

The following activities are permitted by the existing licence:

Licensable activity	Permitted
Plays	
Films	
Indoor sports events	
Boxing or wrestling entertainment	
Live music	
Recorded music	
Performances of dance	
Anything of a similar description to live or recorded music or dance	
Provision of late night refreshment	✓
Sale by retail of alcohol for consumption on the premises	✓
Sale by retail of alcohol for consumption off the premises	

3.7 Licensable hours

	Alcohol	Late night refreshment	Opening hours
Monday	11:00 – 00:00	23:00 – 00:00	08:30 – 00:30
Tuesday	11:00 – 00:00	23:00 – 00:00	08:30 – 00:30
Wednesday	11:00 – 00:00	23:00 – 00:00	08:30 – 00:30
Thursday	11:00 – 00:00	23:00 – 00:00	08:30 – 00:30

Friday	11:00 – 00:00	23:00 – 00:00	08:30 – 00:30
Saturday	11:00 – 00:00	23:00 – 00:00	08:30 – 00:30
Sunday	11:00 – 23:30	23:00 – 23:30	08:30 – 00:00
Monday (after Bank Holiday)	11:00 – 23:30	23:00 – 23:30	08:30 – 00:00
Tuesday (after Bank Holiday)	11:00 – 23:30	23:00 – 23:30	08:30 – 00:00
New Year's Eve	11:00 – 00:00	23:00 – 00:00	08:30 – 00:30

3.8 A copy of the current licence is attached at appendix 4.

4.0 **BACKGROUND INFORMATION**

4.1 The following background information is known about these premises:

4.2 Designated premises supervisor
Rajesh Selvaraju since 2 April 2014.

4.3 Current licences held
The current licence is 14/01025/LAPRE and was granted on 11 August 2014, when the licence was transferred to Jimmy's Worlds Restaurants Limited.

The premises was initially licensed on 18 July 2011 following a hearing in front of a Licensing Sub-Committee. The hours and licensable activities are the same as when the licence was initially granted. With the exception of condition 4 of annex 3 of the licence, the conditions of the licence are also the same as when the licence was initially granted.

4.4 Closing date for representations
5 November 2014.

The consultation period was extended by 1 day due to issues with the public notice. Please see paragraphs 9.10 – 9.13 for the details.

4.5 Visits and Enforcement action
The licensing authority was first contacted by Collette Fahy, the applicant, on 2 Jan 2013. The initial contact was as a result of a complaint made to the planning department.

At this time, the complaint was with regards to how units within the development had started operating by Christmas 2012 despite the rear service yard not being open for deliveries or collections, and the problems which this was causing.

Since this time, Mrs Fahy has regularly contacted the licensing authority with regards to the servicing of the development, including supplying photographs, as we have sought to resolve the issues faced by residents.

With regards to Jimmy's World Grill & Bar, the following complaints have

been received:

- Bins being left in the rear yard rather than in the bin storage areas
- Waste collections made outside of permitted hours
- Glass waste being deposited in external bins outside of permitted hours
- Deliveries occurring out of permitted hours
- Failure to display signage requesting patrons to leave quietly

A visit to the premises on 12 June 2013 identified breaches of the licence, specifically that there was no personal licence holder on duty at the premises (as required under condition 2 of annex 2) and that there were no notices on display requesting patrons to leave the area quietly (as required under condition 6 of annex 2). On 1 August 2013 the director of East West Restaurants Limited (the licence holders at the time) was issued a Formal Warning for these breaches.

In November 2013, a minor variation was submitted to change the licence to allow the use of the service yard from 07:00 instead of 09:00. In support of this application, it was claimed that it was not possible to find a waste carrier who would collect after 09:00. This was supported by research conducted by the licensing authority. As a result, the minor variation was granted. This condition is still on the existing licence, which is attached at appendix 4.

However, it would appear that another operator within the development has been able to secure a waste carrier who does collect after 09:00, because such collections have been witnessed.

Since the minor variation, and after numerous visits to check compliance and following complaints, the premises have been found to be operating within the conditions of the licence. Both Licensing Officers and Environmental Health Officers have inspected the systems in place to ensure glass waste is not emptied outside. The bins are collected after 07:00 and before 21:00 as required by the licence and planning permission.

The licensing authority have been advised that the collection times are routed directly to the waste carrier's Transport Manager. Any deviation from this collection pattern is flagged to the manager's mobile phone at the time of collection. This system allows the collection times to be monitored, and prevent repeatedly collecting before the permitted hours.

The licensing authority were provided with pictures of waste carriers arriving before the agreed hours after the licence had been varied. However, these waste carriers were found to not be servicing Jimmy's World Grill & Bar, and instead were servicing other units within the development.

Bins do continue to be stored in the rear yard area. The licensing authority have been advised that this is not a breach of the planning condition. By storing bins in this manner, this may be in contravention of the agreement between the landlord and the premises, but this is not a matter in which the

licensing authority have any power to intervene.

Numerous noise issues continue to be raised in relation to this development and the operation of businesses both within and adjacent to the development, not just Jimmy's World Grill & Bar. The premises do contribute to this noise when their collections are made, albeit when in compliance with their licence conditions.

In the 22 months since these issues were first raised, there have been times when the situation has improved, and there have been times when the situation has deteriorated. It must be noted that after an escalation in March/April 2014 and the involvement of Mr Andrew Potts, acting for the licence holders, the situation in regard to this specific premises has significantly improved.

5.0 RESPONSIBLE AUTHORITIES

5.1 No representations have been received from the responsible authorities.

5.2 Although Environmental Health and Planning have not submitted representations on the merits of the review, they have provided information with regards to their involvement with this premises. These comments are reproduced over the following paragraphs.

5.3 Response from Environmental Health

Environmental Health have been involved in setting the hours of use for the Met Quarter service yard, accessed from Smith Street, from the planning stages of the development through to the initial licensing and subsequent minor variation. There has been further involvement with various businesses on the specifics of their operation, however these are outside the scope of this summary.

As part of the planning process it was identified that although the development is in a Town Centre location it would have the potential to cause disturbance to local residents. We therefore ensured that conditions were attached to the planning permission to restrict the hours when the service yard could be used to service the development. Specifically the following conditions were attached:

- No servicing of the development from the service yard on Smith Street shall take place before 07.00 or after 21.00 Mondays to Fridays, before 08.00 or after 13.00 on Saturdays and not at all on Sundays and Public Holidays.
- There shall be no outside storage of goods, materials, waste, or packaging within the service yard at any time.

It was felt at the time the planning permission was granted that these conditions would adequately protect the residents from statutory noise nuisance as set out in the Environmental Protection Act 1990. Specifically the hours in which the service yard could be used were set having considered

the nature of the locality, a consideration which must be taken into account when considering statutory nuisance. Although Smith Street is predominately residential it is located within the town centre and activity in the area after 07.00 is significant. The second condition prohibiting the storage of items, including rubbish, in the service yard was included in order to minimise the noise from items being placed into the bins.

When the licence was first granted in 2011 the Licensing Sub-Committee attached more stringent conditions to Jimmy's World Grill and Bar restricting the use of the service yard to between 09.00 and 21.00 Monday to Fridays and between 09.00 and 13.00 on Saturdays and at no times on Sundays or Public Holidays.

A minor variation was made on 27 November 2013 which altered the hours the service yard could be used to bring them into line with those imposed through planning condition. As part of this variation Environmental Health carried out monitoring of refuse collections and deliveries made to the Met Quarter between 06.30 and 09.00 and it was felt that deliveries to this area at these times were in keeping with the character of the neighbourhood and would not constitute a statutory nuisance. This decision was made on the understanding that no deliveries or collections would take place before 08.00 on Saturdays and not at all on Sundays.

Following notification of this review we carried out monitoring over seven working days from 07.00 until between 08.00 and 09.00. We found that the situation had not changed from that found in 2013 and that we again felt that the use of the service yard from 07.00 Monday to Friday and from 08.00 on Saturdays would not give rise to a statutory nuisance. This decision was made having considered the character of the neighbourhood which is in a town centre location and is active from 07.00 with street cleaning, buses, and deliveries being made to businesses in King Street all generating significant noise in Smith Street. This means that the activities in the service yard are in keeping with the other activities in this area.

It was also noted that deliveries and collections made in King Street were subjectively noisier than those made in the service yard at certain locations in Smith Street, this is likely due to attenuation provided by the service yard wall.

5.4 Response from Planning

Conditional Planning Permission for a major development at High Street/King Street was granted on the 10th March 2011. The reference number for this application is 10/01236/FULM.

Condition 17 of the planning permission deals with the servicing of the yard at the rear of the development, the entrance and exit to which is located on Smith Street. The condition states as follows:

"No Servicing of the development from the service yard on Smith Street shall take place before 7.00 or after 21.00 Mondays to Fridays, before 08.00 or

after 13.00 on Saturdays and not at all on Sundays and Public Holidays.”

Condition 18 states:

"There shall be no outside storage of goods, materials, waste, or packaging, within the service yard at any time."

The approved plans show that the restaurants within the development were to construct internal bin storage areas. These areas have been constructed as shown on the approved plans.

The intention of providing the internal bin stores was to keep the bins out of the service yard. However, the wording of the condition does not explicitly prohibit bins from being stored in the service yard, and the use of the bin stores can not be enforced.

There have been numerous complaints to the planning enforcement team with regards the rear service area. Complaints have been received about the times of the deliveries, outside of the hours under condition 17. However, emptying the glass bins late at night, or the noise from deliveries and collections, is not something that can be dealt with under planning legislation.

6.0 INTERESTED PARTIES

6.1 Representations have been received from the following interested parties in support of the review.

Reference letter	Name	Address	Representative Body (Yes/No)	Relevance to which licensing objective
A	Klaudia Buggaj	12 Smith Street, Watford	No	Public nuisance
B	Lynda Gelfs	11 Smith Street, Watford	No	Public nuisance
C	Emma Ryder	1A Smith Street, Watford	No	Public nuisance

6.2 These representations are attached at appendices 5A to 5C.

6.3 The representations are on similar lines to the review, and concern allegations of emptying the glass bins late at night and deliveries occurring outside of permitted hours. The representations also call for measures to keep the bins stored inside of the premises and soundproofing to reduce the escape of noise.

6.4 No representations were received opposing the review.

7.0 POLICY CONSIDERATIONS

7.1 The following provisions of the Licensing Act 2003 apply to this application:

- Sections 51 and 52
These sections details how a review application should be made and the process which should be followed in determining the application.
- The Licensing Act 2003 (Hearings) Regulations 2005 (as amended)
These regulations detail how hearings should be conducted to determine applications submitted under the Licensing Act.

7.2 Statutory guidance

This application was validated on 7 October 2014, before the most recent statutory guidance was issued on 13 October 2014. Therefore, the guidance which applies to this application is the version issued in June 2014.

The following provisions of the Secretary of State's guidance apply to this application:

- Chapter 11
This chapter gives guidance around the review process and determining an application for a review.

7.3 Statement of licensing policy

The following paragraphs of the licensing authority's statement of licensing policy apply to this application:

- LP13 (Licence Reviews)
This policy explains which matters will be considered very seriously upon a review of a Premises Licence; that an evidentiary basis for the allegations made must be laid before the licensing authority; that it is not always appropriate for responsible authorities to exhaust the relevant legal powers at their disposal before calling for a review; and that it is not for the Licensing Sub-Committee to attempt to go behind the finding of the Courts or other legal bodies with regards to convictions or failure to take action.
- Appendix 1 (Licence Review Guidelines)
These guidelines were produced to maintain a degree of consistency and transparency in decision-making with regards to reviews.

7.4 The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.

7.5 The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life. For this reason, the licensing authority's statement of licensing policy requires any party making an application for a licence review to prove the facts on the balance of probabilities (that is, they are more likely than not to have occurred). Robust evidence must be presented and not just anecdotal or hearsay evidence.

8.0 SUMMARY OF APPLICATION

8.1 Collette Fahy's case

Mrs Fahy is seeking amendments to the conditions which are currently attached to the licence for Jimmy's World Grill & Bar on the grounds that these are necessary to promote the licensing objective of the prevention of public nuisance. The full application is attached at appendix 1.

8.2 The application details a number of concerns as to how it is felt that the operation of the premises is undermining the licensing objectives. The issues are with regards to rubbish disposal and collection, when and where these activities take place, and alleged breaches of the licence and planning conditions.

8.3 The application specifically requests that the following should be applied to the premises, either by amended existing licence conditions, or by attaching new conditions to the licence.

- No bottle dumping, or moving of the rubbish bins, should be permitted to take place outside after 7pm
- Rubbish collections should take place after 9am
- Bins should be located inside the premises, with external doors to be fitted with sound proofing insulation and kept shut at all times

8.4 Response of Jimmy's Worlds Restaurants Limited

At the time of writing this report, no formal response to the review had been received from or on behalf of the licence holder, Jimmy's Worlds Restaurants Ltd.

8.5 We have been advised by Collette Fahy that there was a meeting on Friday 7 November 2014 between herself and representatives of Jimmy's World Restaurants Ltd to discuss the review. The licensing authority were not represented at this meeting.

It is understood that the matters discussed at this meeting included the following.

- details of a new contract with the waste carrier which confirms that

rubbish is not to be collected before 7am Monday to Thursday, and not before 8am Friday to Sunday

- signs placed within the kitchen and bin store which state that rubbish and bottles should not be moved after 9pm
- staff to sign an agreement to the effect that no rubbish or bottles should be moved after 9pm, a breach of which will result in the company taking disciplinary action
- that all bottle bins will be kept inside the bin store
- that the doors to the bin store will be insulated with sound proof material, this action to be completed within 7 days of the meeting

Officers did contact the solicitors to confirm the details of this meeting, but had not received any reply by the time of publishing this report.

9.0 OFFICERS OBSERVATIONS

9.1 It should be noted that the rear yard at this development is a communal yard, the use of which is not just limited to licensed premises. There are two premises which use this yard and which are not required to hold a licence under the Licensing Act 2003. The yard is also used by the residents who live in the flats above the development.

9.2 Members are advised to not consider taking any action in connection with this review unless they are satisfied that there is a direct link between the nuisance identified in the review application, and in the representations in support of the review, and the premises of Jimmy's World Grill & Bar.

9.3 Members are also advised that it must be established that there is a direct correlation between the nuisance caused by these activities and the use of the premises for licensable activities.

9.4 It has already been mentioned that the planning permission for this development contains the following condition regarding the servicing of premises:

17 No servicing of the development from the service yard on Smith Street shall take place before 07.00 or after 21.00 Mondays to Fridays, before 08.00 or after 13.00 on Saturdays and not at all on Sundays and Public Holidays.

9.5 The timings in this condition are very similar to the current licence condition regarding the use of the rear yard, which reads as follows:

4 No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2100 hours and 0700 hours the next day Monday to Thursday and on Friday and Saturdays 2100 hours and

0800 hours the next day.

- 9.6 Members should be wary about varying any conditions which result in greater division between the terms of the licence and the planning permission. Although planning and licensing are two separate regimes, it would be practical to ensure that the two authorisations are similar with regards to their conditions and permitted activities.
- 9.7 Members are also reminded of paragraph 1.16 of the statutory guidance, which states that licence conditions 'should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation'. This is of particular relevance to this premises because there are already conditions which are duplicated across the licence and planning permission. The planning permission also does contain some restrictions with regards to servicing from the rear yard and to the use of the rear yard.
- 9.8 It has also been mentioned that the planning permission contains the following condition regarding the use of the rear area:
- 16 There shall be no outside storage of goods, materials, waste or packaging within the service yard at any time.
- 9.9 The planning authority has advised that this condition does not apply to the physical bins because the condition does not explicitly state that there shall be no outside storage of the bins.
- 9.10 Under condition 4 of the licence, no rubbish shall be emptied into any bins in the outside areas between 2100 hours and 0700 hours the next day Monday to Thursday, and between 2100 hours and 0800 hours the next day Friday and Saturday. No bins should also be stored outside during these hours.
- 9.11 Should the Sub-Committee find it appropriate to amend the licence by attaching additional conditions, officers suggest the following conditions may be sufficient to address the issues raised within the review and the supporting representations. These conditions do not restrict the Sub Committee's power to attach conditions from the pool of model conditions (amended or otherwise), or to draw up their own conditions based upon the submissions put to them, if they consider that they are appropriate, proportionate, justifiable and within the applicant's power to comply with.
- No rubbish, including bottles, or bins shall be moved within the outside areas between 2100 hours and 0700 hours the next day Monday to Thursday, and between 2100 hours and 0800 hours the next day on Friday and Saturday

This would prohibit moving the bins within the outside area during the evenings or early mornings, and addresses a specific point of the review that the movement of bins late at night causes a nuisance. This is similar to the condition on the current licence, but would potentially allow the bins to be

stored outside at any time because it does not explicitly prohibit the storage of bins.

- All rubbish, including bottles, must only be placed into bins or other waste receptacles used by the premises within the purpose-built bin store. No rubbish shall be placed in these bins between 2100 hours and 0700 hours the next day Monday to Thursday, and between 2100 hours and 0800 hours the next day on Friday and Saturday

This would prohibit emptying rubbish into any outside bin at any time. By restricting this activity to within the bin store only the level of noise would be controlled by the natural sound insulation of the construction of the bin store. Not storing all bins within the bin store would allow the premises space to empty rubbish into the bins and be able to comply with this condition. This is similar to the condition on the current licence, and contains the same controls with regards to the hours to prevent disturbances late at night or early in the morning.

- All doors which lead from the purpose-built bin store to the rear service yard shall be kept closed at all times, except to remove the bins to place them out for collection, and to return the bins once such rubbish has been collected

This condition is also aimed at addressing the noise of the use of the bins, by requiring the door to the bin store to be closed whenever rubbish is being emptied into the bins and reducing the impact of this activity. This is to address the specific issues of the noise caused by the emptying of rubbish into the bins, and a request identified within the review that the doors to the bin store be kept shut at all times. There is no similar condition currently on the licence.

- 9.12 Officers are aware that the representatives for Jimmy's Worlds Restaurants Limited did question the validity of the review application on the grounds that they had not received a copy of the application form. This query was received on 8 October 2014, the day after the application was received by the licensing authority and other responsible authorities by post. To assist, the licensing authority served a copy of the review application on the agents by email.
- 9.13 It is the responsibility of the applicant to ensure that copies of the review application are served upon the responsible authorities, including the licensing authority, and the holder of the Premises Licence.
- 9.14 A further query was also raised with regards to the validity of the review application because the public notice of review was not immediately available upon the Council's website. The notice was published on 9 October 2014, the day after the date on which the notice should have been published.
- 9.15 The effect of not publishing the notice on the Council's website when required was to extend the consultation period by 1 day so that the notice

was able to be viewed for a full 28 days.

- 9.16 Officers do not consider that the application has been prejudiced or affected in any material terms as a result of these issues. Representatives of the licence holder were served with a copy of the application to maintain full disclosure, far in advance of the arranged hearing date, and a public notice was published on the Council's website for 28 days to advertise the application.
- 9.17 The Sub-Committee have a duty to "have regard" to both the licensing policy and the statutory guidance, but are not bound by either document. However, should Members wish to depart from the policy or guidance then detailed reasons for this must be given as part of any decision.
- 9.18 In determining this application, the Sub-Committee must have regard to the application and any relevant representations and take such steps as it considers appropriate for the promotion of licensing objectives. The steps are:
1. to take no further action;
 2. to issue a formal warning to the premises supervisor and/or the licence holder
 3. to modify the conditions of the licence;
 4. to exclude a licensable activity from the scope of the licence;
 5. to remove the designated premises supervisor;
 6. to suspend the licence for a period not exceeding three months;
 7. to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

Where the Licensing Sub-Committee takes a step mentioned in 3 or 4 as mentioned above, it may do so either permanently or for a period not exceeding 3 months.

The Licensing Sub-Committee is asked to give full reasons for its decision.

The Licensing Sub-Committee must make its decision within five working days of the end of the hearing. Any decision of the Licensing Sub-Committee does not come into effect until either:

- the expiry of 21 days from the date of the decision (the period given for appealing the decision); or

- If the decision is appealed against, until the appeal is disposed of.

Any party to the proceedings may appeal against the decision of the Licensing Sub-Committee.

Appendices

Appendix 1 - application for review

Appendix 2 - map of the premises' location

Appendix 3 - plan of the premises

Appendix 4 - current premises licence

Appendix 5 - representations from interested parties

Background Papers

The following background papers were used in the preparation of this report.

If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Licensing Act 2003

Amended guidance issued under section 182 of the Licensing Act 2003 (June 2014)

Licensing Act (Hearings) Regulations 2005

Watford Borough Council Licensing Policy (January 2013-18)

Watford Borough Council Pool of Model Conditions (March 2013)

File Reference

Jimmy's