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STATUTORY LICENSING COMMITTEE

Date Written	2nd March 2020
Report Author	Aneurin Hughes
Exempt/Non Exempt	Non Exempt
Committee Date	26th March 2020

To: Chair, Ladies and Gentlemen

Cais ar gyfer Adolygu Trwydded Eiddo / Application to Review a Premises Licence – Re- Evolution, Bethesda Street, Merthyr Tydfil, CF47 8LR

1.0 SUMMARY OF THE REPORT

- 1.1 An application to review a Premises Licence was submitted by South Wales Police on 30th January 2020 in relation to the above named premises. In accordance with the Licensing Act 2003, the Licensing Committee is required to determine the application, having regard to the details provided within the application; any supporting evidence; any representations submitted during the consultation period and any verbal evidence provided at the Hearing.
- 1.2 In determining this application, Members must do so with a view to promoting the four licensing objectives in the overall interests of the local community. Members must give appropriate weight to: -
- 1.2.1 Steps appropriate to promote the licensing objectives;
 - 1.2.2 The representations presented by all parties;
 - 1.2.3 Section 182 Guidance issued by the Home Office dated April 2018;
 - 1.2.4 Merthyr Tydfil County Borough Council's Statement of Licensing Policy dated December 2018.

2.0 RECOMMENDATION(S)

2.1 In determining the application, Councillors must have regard to the four licensing objectives on which the Licensing Act 2003 is based. These are:

- The prevention of crime and disorder
- Ensuring public safety
- Prevention of public nuisance, and
- The protection of children from harm

2.2 Councillors must have consideration to the representations and take such steps it considers appropriate for the promotion of the licensing objectives.

The steps are:

- (i) To take no action to promote the licensing objectives;
- (ii) To modify the conditions of the 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;
- (iii) To exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or the playing of recorded music;
- (iv) To remove the Designated Premises Supervisor, for example, because they consider that the problems are the result of poor management;
- (v) To suspend the licence for a period not exceeding three months;
- (vi) To revoke the licence.

2.3 In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns that the representations identify. Any remedial action taken should be directed at these causes, as they are the reason for the Review.

3.0 INTRODUCTION AND BACKGROUND

3.1 On 30th January 2020, an application to review the Premises Licence for Re-Evolution was submitted by South Wales Police on the grounds of failure to promote three of the four licensing objectives, specifically the Protection of Children from Harm; the Prevention of Public Nuisance and the Prevention of Crime and Disorder. A copy of the application is attached at **Appendix A** to this Report.

3.2 In accordance with procedure South Wales Fire Service, the Local Health Board and the Council's Public Health, Trading Standards, Planning, Children's Safeguarding Unit, Home Office and Licensing Sections were consulted on the application.

3.3 In accordance with procedure, Ward Members were notified of the Review Application.

- 3.4 An advertisement was placed at the Council Offices and notices were displayed at the premises and on the Council website in respect of the application.
- 3.5 Re-Evolution Ltd have held the Premises Licence since the 17th December 2019. The opening night was Friday 20th December 2019.
- 3.6 The Licensing Section received complaints on the 21st and 22nd December 2019 from a resident near to the premises. Redacted copies of these are attached at **Appendix B** to this Report.
- 3.7 Officers from the Licensing Authority attended the premises on 23rd December 2019 where it was agreed by the premises licence holder that he had allowed licensable activities to occur beyond the hours allowed by their licence and that there were breaches of the conditions attached to the premises licence.
- 3.8 On the 23rd December 2019, a Section 19 Closure Notice issued under the Criminal Justice and Police Act 2001 was served on Mr William Morgan as the Director of Re-Evolution Ltd, the Premises Licence Holder. This notice was subsequently lifted on the 24th December 2019, following confirmation that the premises were compliant with the conditions attached to its licence. Copies of these Notices are attached at **Appendix C** to this Report.
- 3.9 A Final Warning Letter was issued to Re-Evolution Ltd on the 27th December 2019 for operating beyond their licensed hours and for breaching conditions attached to their licence. This Warning Letter clearly informs the licence holder that should any further complaints or breaches of legislation occur then the Licensing Authority would be more than justified in Reviewing the Premises Licence and/or taking formal action through the courts. A copy of this letter is attached at **Appendix D** to this Report.
- 3.10 The Licensing Team Leader and South Wales Police Licensing Officer attended the premises on the 21st January 2020 to view CCTV footage of the weekend of the 17th – 19th January 2020 following reports of underage sales at the premises. Full details of this inspection can be found in the representations submitted by South Wales Police and the Licensing Authority (**Appendices A and J**).
- 3.11 On 23rd January 2020, Mr Narinder Singh removed himself as the DPS of the premises following discussions with South Wales Police and the Licensing Department in respect of the underage issues identified at the premises and his liability.
- 3.12 Miss Rebecca Dando was named as the DPS with immediate effect on the 23rd January 2020. She was the Bar Manager of the premises and had been involved in the meeting of the 16th December 2019 with South Wales Police and the Licensing Team Leader.
- 3.13 Further reports of underage consumption of alcohol at the premises were received on the 25th January 2020. Subsequent viewing of the CCTV by South Wales Police and the Licensing Department did not identify any clearly underage persons but did highlight an unlicensed activity occurring at the premises.

- 3.14 The above issues contributed, but not wholly, to the submission by South Wales Police of the Review application.
- 3.15 Following receipt of the application for Review, the licence holder Mr William Morgan, on behalf of Re-Evolution Ltd, submitted an email in response to one of the reasons for the Review being requested. A copy of this email is attached at **Appendix E** to this Report. Mr Morgan will be able to expand on this at the Hearing.

4.0 REPRESENTATIONS

Responsible Authorities

- 4.1 South Wales Police – as the applicants for the Review South Wales Police will be able to expand on the details within the application at the Hearing. The application is attached at **Appendix A** to this Report. South Wales Police have requested the revocation of the Premises Licence.
- 4.2 Environmental Health – the Licensing Authority received Representations on the 30th January 2020. A copy of these are attached at **Appendix F** to this Report. Attached at **Appendices F-1, F-2 and F-3** are copies of Noise Diary Logs that have been received by Environmental Health.
- 4.3 Trading Standards – the Licensing Authority received Representations on the 3rd February 2020 supporting South Wales Police’s application on the grounds of protection of children from harm in view of the underage sale of alcohol. A copy of this correspondence is attached at **Appendix G** to this Report.
- 4.4 Area Child Protection – the Licensing Authority received Representations on the 27th February 2020. A copy of these are attached at **Appendix H** to this Report. The Area Child Protection Team has endorsed the request by South Wales Police for the licence to be revoked.
- 4.5 Local Health Board – the Licensing Authority received Representations on the 17th February 2020. A copy of these are attached at **Appendix I** to this Report. The Local Health Board has endorsed the request by South Wales Police for the licence to be revoked.
- 4.6 Licensing Authority – the Licensing Authority received Representations on the 27th February 2020. A copy of these is attached at **Appendix J** to this Report.

Members of the Public

- 4.7 The Licensing Authority received a representation on the 26th February 2020 from a local resident. A copy of this is attached at **Appendix K** to this Report.
- 4.8 The Licensing Authority received a further representation on the 27th February 2020 from another local resident. A copy of this is attached at **Appendix L** to this Report.

- 4.9 The Licensing Authority received a representation on 27th February 2020 from Llamau Ltd, a housing project in Garth Newydd Court for vulnerable homeless and potentially homeless young people. A copy of these representations is attached at **Appendix M** to this Report.
- 4.10 The Licensing Authority received a representation on the 27th February 2020 from a Ward Member for Park Ward, the Ward that the premises are situated in. A copy of this is attached at **Appendix N** to this Report.
- 4.11 The Licensing Authority received a representation on the 10th February 2020 from South Wales Police Schools Liaison Officer. A copy of this is attached at **Appendix O** to this Report.

5.0 PREMISES HISTORY

- 5.1 The current premises licence holder is Re-Evolution Ltd. They have held the premises licence since it was transferred into their name on the 17th December 2019.
- 5.2 A detailed history of the premises, the premises licence holders and the various designated premises supervisors is attached at **Appendix P** to this Report. This covers the premises through its various guises of Punjabi Junction / Tiffins / Re-Evolution, from the initial grant of a Premises Licence to Mr Kamaljit Singh on the 16th June 2018.
- 5.3 Members attention is drawn to the fact that the premises has had three different Premises Licence Holders and four different Designated Premises Supervisors. A fifth designated premises supervisor should be in place shortly.
- 5.4 Members attention is further drawn to the fact that since 17th December 2019 the premises has had three different designated premises supervisors. The rate of turnover of DPS' does not contribute to the promotion of any of the Licensing Objectives and can be perceived to indicate poor management as a direct reflection of poor company practice or policy at the premises.

6.0 POLICY

- 6.1 Members are reminded that in exercising its powers in determining this Review application they must have regard to Merthyr Tydfil County Borough Council's Statement of Licensing Policy dated December 2018.
- 6.2 In accordance with Section 1.1 of the above Policy, the Licensing Authority will carry out its functions under the Licensing Act 2003 with a view to promoting the four licensing objectives as set out in the Act, each of which is of equal importance.

6.3 In particular, the following sections may be useful: -

- 6.3.1 Section 4.2 states: - “Licensing is about the regulation of licensed premises ... Terms and conditions attached to the various permissions granted under the Act will be focused on matters within the control of the individual licensees and other relevant permissions.”
- 6.3.2 Section 4.3 states: - “As a matter of policy, the Licensing Authority expects every holder of a licence, certificate or permission to be responsible for minimising the impact of their activities and any anti-social behaviour demonstrated by their patrons within the immediate vicinity of their premises.”
- 6.3.3 Section 4.4 states: - “The Licensing Authority will use its powers to promote best practice in relation to the operation of licensed premises and to deter poor practice.”
- 6.3.4 Section 19.4 states: - “In particular, the Licensing Authority will expect applicants to address the following matters in their operating schedules:
- The capability of the person in charge to ensure effective and responsible management of the premises;
 - Where premises are subject to age restrictions, the procedures which are in place to conduct age verification checks.”
- 6.3.5 Section 21.2 states: - “The Licensing Authority intends to interpret ‘public nuisance’ in its widest sense and takes it to include such issues as noise, light, odour, litter and disturbance from customers in the immediate vicinity of the licensed premises, where these matters impact on those living or working in an area.”
- 6.3.6 Section 21.3 states: - “...the Licensing Authority will consider the adequacy of measures which are proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. In particular, the Licensing Authority will expect applicants to address the following matters in their operating schedules:
- The location of premises and proximity to residential and other noise sensitive premises;
 - Measures taken to prevent noise and vibration escaping from the premises from such sources as music, noise from ventilation equipment and human voices;
 - The use of beer gardens, patios and other open-air areas;
 - Any history of previous nuisance complaints which have been proved against the premises;
 - External smoking areas must be selected so as to minimize any disturbance to the neighbourhood, should be covered effectually by CCTV or be supervised. Access to the smoking area must be controlled such that noise from any entertainment does not become intrusive to neighbouring premises.”

- 6.3.7 Section 22.2 states: - “While the Act does not generally prohibit children from accessing licensed premises it does prohibit children under the age of 16, unless accompanied by an adult, from accessing licensed premises which are primarily or exclusively for the supply and consumption of alcohol on the premises.”
- 6.3.8 Section 23.3 states: - “The Licensing Authority will take a particularly serious view of any application for the review of any Premises Licence where any of the following have been involved:
- The underage purchase and consumption of alcohol”
- 6.3.9 Section 23.4 states: - “Or, where management practices are failing to address adverse impact to the community in respect of the following criteria:
- Where the Police have been called frequently to attend to incidents of disorder;
 - Where there have been prolonged and/or repeated instances of public nuisance;
 - Where serious risks to children have been identified;
 - Continuous non-compliance with conditions of licence.
- 6.3.10 Section 23.7 states: - “...the Licensing Authority and partners will adopt a stepped approach, where early warning of concerns will be given to licensees to allow opportunity to address problems. A failure to take heed of a warning and effect an improvement is likely to result in a review. In cases when the crime prevention objective is being undermined it is expected that revocation of the licence – even in the first instance - will be seriously considered.”
- 6.3.11 Section 25.2 states: - “The Licensing Authority will take a graduated response where offences against licensing legislation are found or where licence conditions have been contravened. An isolated administrative offence – such as failing to maintain certain records – may be dealt with purely by way of a written warning. More serious offences, those which have been continually committed over a period of time or which jeopardise the licensing objectives may result in a referral for prosecution.”

7.0 LEGISLATION

- 7.1 The relevant legislation is the Licensing Act 2003 and the relevant sections are: -
- 7.1.1 Section 4(1) - A licensing authority must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives.

- 7.1.2 Section 51(1) - Where a premises licence has effect, a responsible authority or any other person may apply to the relevant licensing authority for a review of the licence.
- 7.1.3 Section 52(2) - Before determining the application, the authority must hold a hearing to consider it and any relevant representations.
- 7.1.4 Section 52(4) - The steps are—
- (a) to modify the conditions of the licence;
 - (b) to exclude a licensable activity from the scope of the licence;
 - (c) to remove the designated premises supervisor;
 - (d) to suspend the licence for a period not exceeding three months;
 - (e) to revoke the licence;

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

- 7.1.5 Section 52(11) - A 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.

7.2 The Secretary of State has issued Guidance to Licensing Authorities under Section 182 of the Licensing Act 2003, to which Licensing Authorities must have regard to in discharging their functions. The latest version of this Guidance is dated April 2018.

7.3 Chapter 11 of this Guidance deals with the Review process. Of particular interest to Members should be paragraph 11.30, which states: -

“The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place, licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store’s age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate.”

7.4 Section 19 of the Criminal Justice & Police Act 2001 deals with the closure notice and covers the sale of alcohol otherwise than in accordance with an authorisation. This includes breaching licence conditions, and lasts until the breach has been rectified.

7.5 The effect of a closure notice issued under Section 19 is that licensable activities must cease until the defect has been rectified.

8.0 FINANCIAL IMPLICATIONS

8.1 None.

9.0 EQUALITY IMPACT ASSESSMENT

9.1 It has been identified that an Equality Impact Assessment (EqIA) is not required for the purpose of this report. Please contact the author for details of this decision.

***ELLIS COOPER
INTERIM CHIEF EXECUTIVE***

***CLLR GERAIN T THOMAS
PORTFOLIO MEMBER FOR
REGENERATION AND PUBLIC
PROTECTION***

BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
Does the report contain any issue that may impact the Council's Constitution?		NO