

Licensing Act 2003

Application for the Review of the Premises Licence under Section 51

**Angels Bar & Club
10 High Street
Worthing, BN11 1NU**

Report by the Director for Sustainability & Resources

1. Recommendation

- 1.1 That a Sub-Committee of the Licensing & Control Committee considers and determines the application from:

**Adur & Worthing Councils' Public Health & Regulation
Environmental Protection Team**

for a Review of the premises licence at the above venue under section 51 of the Licensing Act 2003.

2. Reasons for the Hearing

- 2.1 An application for a Review of premises licence 100001222 held by

Mr Omar Mohammad Rafique

has been received from Nadeem Shad for and on behalf of the A&W Public Health & Regulation Manager on 12 March 2024. A&W Public Health & Regulation's Environmental Protection Team being a Responsible Authority as defined under the Act.

- 2.2 Worthing Borough Council is the Licensing Authority that granted the above licence and it therefore falls to members to determine this application.

3. Background

3.1 Premises Licence no. 100001222 authorises the sale of alcohol for consumption on & off the premises, the provision of regulated entertainment and the provision of late night refreshment at the above venue. It has been held by Mr Omar Rafique since December 2022 and following a major refurbishment of the building opened as Angels Bar & Club in February 2023.

3.2 Angels is situated at 10 High Street in what was once an old church building that was converted into a public house over 30 years ago. Situated on the eastern side of High Street it comprises two separate but adjoining 2 floor units.

3.3 The road is a busy mainly commercial street running from Little High Street to the Steyne and is designated as part of the A259. There are now some residential dwellings and accommodation in what was formerly an office block next door to the premises and there are residential dwellings above some of the neighbouring shops and behind the building in Elm Road.

3.4 High Street contains a large multi storey car park which is situated directly opposite the licensed premises which is part of the Guildbourne shopping centre. There are a number of commercial units, including bars and restaurants, in the vicinity.

3.5 The current DPS of the venue is Mr Omar Mohammad Rafique and he has been in post since February 2023 and he holds a Personal Licence issued by Worthing Borough Council.

3.6 The current Premises Licence authorises:

- Sale of Alcohol for consumption on & off the premises between:
 - 10:00 hrs and 03:10 hrs Monday - Sunday
- Provision of Regulated Entertainment between:
 - 10:00 hrs and 03:10 hrs Monday - Sunday
- Provision of Late Night Refreshment:
 - 23:00 hrs and 03:10 hrs Monday - Sunday
- Hours the premise can open to the public:
 - 10:00 hrs and 03:30 hrs Monday - Sunday

3.7 These hours were granted by a Licensing & Control Sub-Committee at a hearing in August 2023. However, a condition of licence states that until such time as a noise insulation scheme has been implemented and approved by the Licensing Authority the hours the premises are authorised to open to the public and provide licensable activities remain as:

- Sale of Alcohol for consumption on & off the premises between:
 - 10:00 hrs and 00:10 hrs Monday - Wednesday
 - 10:00 hrs and 02:00 hrs Thursday
 - 10:00 hrs and 03:00 hrs Friday & Saturday
 - 10:00 hrs and 23:30 hrs Sunday
- Provision of Regulated Entertainment between:

- 10:00 hrs and 00:10 hrs Monday - Wednesday
- 10:00 hrs and 02:00 hrs Thursday
- 10:00 hrs and 03:00 hrs Friday & Saturday
- 10:00 hrs and 23:30 hrs Sunday
- Provision of Late Night Refreshment
 - 23:00 hrs and 00:10 hrs Monday - Wednesday
 - 23:00 hrs and 02:00 hrs Thursday
 - 23:00 hrs and 03:00 hrs Friday & Saturday
- Hours the premise can open to the public:
 - 10:00 hrs and 00:30 hrs Monday - Wednesday
 - 10:00 hrs and 02:30 hrs Thursday
 - 10:00 hrs and 03:30 hrs Friday & Saturday
 - 10:00 hrs and 00:00 hrs Sunday

These being the hours in force prior to the variation being granted on 24 August 2023. A noise insulation scheme has not been presented to the Licensing Authority so currently the premises can only operate on the reduced hours.

3.8 Included in the report is

- A map & photos of the area (Appendix A)
- A plan of the premises (Appendix B)
- The current Premises Licence (Appendix C)
- The Review Application (Appendix D)
- Responsible Authority Representations (Appendix E)
- Public Representations (Appendix F)

4. The Application

4.1 The application for a review of the licence is due to representations made that the licence holder is undermining the licensing objectives. The application is attached. (Appendix D)

4.2 The application is made on behalf of the A&W Public Health & Regulation - Environmental Protection Team, a responsible authority as defined in Section 13 of the Act.

4.3 The applicant has included detailed information in the application supporting their case that the licence holder is undermining the Licensing Objective:

- Prevention of Public Nuisance

Citing multiple complaints from local residents regarding excessive music noise emanating from the premises which resulted, after investigation, in a Noise Abatement Notice being served in July 2023. Followed by continued complaints from residents and breaches of that Noise Abatement Notice.

4.4 Public Health & Regulation - Environmental Protection are requesting that members consider:

- *Amendment of the current licence restricting the hours permitted for regulated entertainment to 23:00 hrs each night to reduce the excessive and unreasonable amount of music noise affecting local residents and the public nuisance that is being caused as a result*

5. Promotion of the Licensing Objectives

5.1 The Licensing Act 2003 and regulations require that the Council, as local licensing authority, carries out its functions with a view to promoting the four licensing objectives:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance;
- the protection of children from harm.

According to the Home Office Guidance each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times.

5.3 In carrying out its licensing functions, the licensing authority must also have regard to Guidance issued by the Home Secretary and its own Statement of Licensing Policy. Members are advised that the following sections of the Worthing Borough Council's Policy may be particularly relevant to consideration of this matter, though of course the Policy in its entirety must be considered. Sections indicated relate to paragraph numbers in the Policy itself:

Prevention of Public Nuisance

- 4.25 *Licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of disturbances impacting upon people living, working or sleeping in the vicinity of the premises or wider afield.*
- 4.26 *Noise disturbance can arise from entertainment or activities held within licensed premises and also from people or motor vehicles outside licensed premises. The Licensing Authority will expect Operating Schedules to address these issues. Advice and guidance can be obtained from Licensing Officers or the Council's Environmental Protection Team. If representations are received the Licensing Authority may utilise appropriate conditions to control noise disturbance and the use of such conditions will depend upon the activities/entertainment/hours of operation proposed; the nature of the locality; and existing background noise levels and ambient noise levels. Noise control conditions may include the satisfactory sound insulation of licensed premises; compliance with maximum noise levels; and limiting hours of operation.*
- 4.27 *When addressing public nuisance the applicant should initially identify any particular issues (having regard to their particular type/construction of their premises, proposed activities and nature of locality) which are likely to adversely affect the promotion of the objective to prevent public nuisance. Such steps as are required to deal with these identified issues should be included within the applicant's Operating Schedule.*
- 4.28 *Anti-social behaviour such as excessive noise from access and egress or patrons littering should also be addressed in the Operating Schedule.*

- 4.30 *Patrons may no longer smoke inside licensed premises and consequently may go outside to smoke. Applicants and existing licence holders are encouraged to assess whether the noise from such patrons could potentially disturb nearby residents and whether there is potential for smoke to drift to nearby residential properties.*
- 4.31 *The Licensing Authority will consider attaching conditions to licences and permissions to prevent public nuisance, but will seek to avoid duplication with the requirements of other regulatory regimes.*

Enforcement

- 12.1 *Once licensed, it is essential that premises are maintained and operated so as to ensure the continued promotion of the licensing objectives and compliance with the specific requirements of the 2003 Act and the Council will make arrangements to monitor premises.*

Reviews

- 12.5 *The 2003 Act provides a clear focus on the promotion of the four statutory licensing objectives which must be addressed when licensing functions are undertaken. The Act provides tough powers, in the form of the review procedure, to enable licensing authorities to bring the minority of badly managed premises, which are failing to promote the licensing objectives, into line with the best.*
- 12.10 *When considering an application for a Review the priority of the Licensing Authority will be to establish the cause or causes of the concerns and failures and to take necessary and proportionate remedial action.*

6. Consultation

- 6.1 The application has been subject to the statutory consultation and statutory public advertising arrangements in accordance with the provisions of the Act.

7. Relevant Representations

- 7.1 The application received one representation from the Responsible Authorities

- WSCC Fire & Rescue Service (Appendix E)

And six representations from the public.

- 7.2 WSCC Fire & Rescue Service has provided information regarding their inspections of the premises.
- 7.3 Six representations were received from members of the public who have detailed the impact that noise and public nuisance issues have had on their lives caused by music noise from this particular venue.
- 7.5 Both the applicant and licence holder have been invited to provide any information supporting their cases and the applicant, licence holder and those that have made relevant representation have been invited to attend the Committee meeting. All parties have the right to address members.

8. Mediation

- 8.1 As part of the licensing process the Licensing Act encourages, where possible, mediation. However, because this is a review the application cannot avoid being heard by this committee even if successful mediation meant all representations were withdrawn.
- 8.2 Officers are unaware if any mediation has been conducted. Any developments will be reported to members as soon as received or at the hearing.

9. Consideration

- 9.1 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken. These being the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. Each objective is of equal importance and it is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times.
- 9.2 But members should note that the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
- *Necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting licensed premises of entertainment;*
 - *Introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet customers' expectations;*
 - *Greater choice for consumers, including tourists, about where, when and how they spend their leisure time;*
 - *Encouragement of more family friendly premises where younger children can be free to go with the family;*
 - *Further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities;*
 - *Regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring.*
- 9.3 When determining this application members need to carefully consider the following:
- The four statutory licensing objectives, especially in this case the prevention of public nuisance
 - Worthing Borough Council's 'Statement of Licensing Policy'
 - The 'Guidance issued under Section 182' by the Home Secretary
 - The application & relevant representations
 - The testimony and any relevant information supplied by the licence holder, the applicant and the representors.
- 9.4 These are the only matters to be addressed by the authority when considering this review application. The statutory licensing objectives are the only grounds on which

representations can be made, and the only grounds on which an authority will be able to refuse an application, suspend or revoke a licence or impose conditions.

9.5 When considering an application for a review, pursuant to s51 of the Act, the following options are available to the Committee to ensure promotion of the Licensing Objectives:

- To take no action.
- Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition).
- Exclude a licensable activity from the scope of the licence.
- Remove the designated premises supervisor because they consider the problems are the result of poor management.
- Suspend the licence for a period not exceeding three months.
- Revoke the licence.

The committee could also issue an informal warning to the licence holder and/or recommend improvement within a particular period of time.

9.6 In determining an application for a review the following sections of the Home Secretary's Guidance issued under section 182 of the Licensing Act 2003 (Amended – December 2023) should be taken into account:

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.20 In deciding which of these powers to invoke (see section 9.5 of this report), it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of

up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

9.9 In all cases members are required to give reasons for their decision.

10. Legal Implications

10.1 Under Section 181 and Schedule 5 of the Act, rights of appeal to the Magistrates' Court in respect of applications for review of an existing licence include:

- The applicant or licence holder may appeal against any decision to modify the conditions of the licence, suspend or revoke a licence.
- The applicant may appeal against a rejection in whole or part of an application to review.
- Those that have made relevant representations may appeal against a review being granted, rejected, or against the modification or lack of modification of any conditions.

10.2 The Act allows for the local licensing authority to undertake a review following the grant of a premises licence, when requested to do so by a responsible authority, such as the police or the fire authority, or any other party, such as a resident living in the vicinity of the premises. The government's guidance states:

"The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with licensing objectives are occurring after the grant or variation of a premises licence.

At any stage, following the grant of a premises licence, a responsible authority, or any other person, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives."

10.3 In determining this application, the principles of the Human Rights Act 1998 must be taken into consideration and the convention rights of both individuals and businesses will be given due weight.

10.4 Members must consider each application on its own merits, and in accordance with the principles of natural justice as well as the provisions of the Licensing Act 2003. All

relevant factors must be taken into account, and all irrelevant factors must be disregarded.

- 10.5 All applications before the Committee must be considered against the backdrop of anti-discriminatory legislation, such as the Equality Act 2010 and also in accordance with the Council's stated policy on Equal Opportunities.
- 10.6 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from the public and the responsible authorities particularly the Police.

11. Other implications

- 11.1 Any decision taken will have regard for the local environment and, in particular, any conditions attached for the purposes of preventing public nuisance will take this principle into account. There are no significant direct race relations or equal opportunity implications that have been identified.

12. Recommendation

- 12.1 Members are requested to determine the application by the A&W Public Health & Regulation - Environmental Protection Team for a Review of the Premises Licence held by Mr Omar Rafique at the Angels Bar & Club situated in High Street, Worthing. Members are requested to give reasons for their determination.**

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Background Papers:

- Licensing Act 2003
<https://www.legislation.gov.uk/ukpga/2003/17/contents>
- Guidance issued under section 182 of the Licensing Act 2003 (revised Dec 2023)
https://assets.publishing.service.gov.uk/media/65a8f578ed27ca000d27b1f9/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_-_December_2023.pdf
- Worthing Borough Council's Statement of Licensing Policy
<http://www.adur-worthing.gov.uk/licensing-and-permits/consultations-policy-forum/policy-and-forum/>

Appendices:

- Appendix A - Map & photos of the area.
- Appendix B - Plan of the premises.
- Appendix C – Angels Bar & Club's Premises Licence.
- Appendix D – A&W PH&R's Review Application
- Appendix E – Responsible Authority Representation
- Appendix F - Public Representation

Adur & Worthing Public Health & Regulation Licensing Unit

Town Hall, Worthing

Ref: SJ/Lic.U/LA03/Review – Angels Bar & Club

Date: 16 April 2024.