

REPORT FOR DECISION

FOR: LICENSING AND CONSENTS APPEALS COMMITTEE

Date: 21 August 2018

Agenda Item: 3

**Contact Officer – Susan Bamford/ Sarah Bradley
Telephone Extension – 308- 170/138**

**SUBMISSION BY SUSAN BAMFORD, PARTNERSHIPS, COMMUNITY SAFETY
& LICENSING MANAGER**

**LICENSING ACT 2003
APPLICATION FOR A NEW PREMISES LICENCE FOR
Xo Lounge, 52 Thornhill Road, Streetly. B74 3EN**

1. PURPOSE OF REPORT

- 1.1 For members to consider an application for a new premises licence to be granted under the Licensing Act 2003.

2. SUMMARY OF BACKGROUND INFORMATION

- 2.1 A premises licence permits “licensable activities”, i.e. the **sale of alcohol** or the **provision of regulated entertainment** or **late night refreshment**, to take place on or from a defined area, a building, part of a building, any vehicle, vessel or moveable structure or even an outdoor space.
- 2.2 Subject to conditions, definitions and exemptions, descriptions of entertainment to be regulated by the 2003 Act include:
- a performance of a play;
 - an exhibition of a film;
 - an indoor sporting event;
 - a boxing or wrestling entertainment
 - a performance of live music;
 - any playing of recorded music;
 - a performance of dance.
- (This list is not exhaustive.)*
- 2.3 As a result of deregulatory changes that have amended the 2003 Act, no licence is required for the majority of the above entertainment activities

providing they take place between **08:00-23:00** on any day and the audience size does not exceed the maximum number permitted.

- 2.4 The provision of late night refreshment means the supply of hot food or hot drink to the public, for consumption on or off the premises, between 2300 hours and 0500 hours or the supply of hot food or hot drink to any persons between those hours on or from premises to which the public has access.
- 2.5 Advertising new application is the responsibility of the applicant and is done by way of a blue notice displayed on the premises for a period of 28 consecutive days and by placing a notice in a local newspaper circulating in the area within 10 working days of the application being made.
- 2.6 Representations can be made – in opposition or support of an application - by any responsible authority or other persons likely to be effected by the application regardless of their geographical proximity to the premise. In order to be “relevant” they must relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives:-
- ***The prevention of crime and disorder***
 - ***Public safety***
 - ***The prevention of public nuisance***
 - ***The protection of children from harm***
- 2.7 Where relevant representations are received a hearing must be arranged for Members to determine the application as it can not be granted under officers’ delegated powers. Relevant representations have been received from other persons in respect of this application.

3. CURRENT SITUATION

- 3.1 An application for a new premises licence has been received from the Xo Lounge Ltd. The application has been advertised as required.
- 3.2 The proposal is to licence these premises
- a. for the supply of alcohol, on and off the premises, Sunday to Thursday 1000 hours until 0200, Friday & Saturday 0900 hours until 0300 hours.
 - b. hours premises will be open to the public Sunday to Thursday 0900 hours until 0200, Friday & Saturday 0900 hours until 0300 hours. A copy of the application is attached at **Appendix A**.
- 3.3 Thirty-one representations have been received from local residents, objecting to the application on the grounds that one or more of the licensing objectives would be undermined. (see attached correspondence at **Appendix B**).
- 3.4 Section 18 (3) of the Licensing Act 2003 states that, where relevant representations are made, the authority must, having regard to the representations made, take such steps as it considers necessary for the promotion of the licensing objectives. The steps are:

(a) to grant the licence subject to (i) such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and (ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application.

3.5 The Statutory Guidance issued under section 182 of the Licensing Act 2003 gives guidance on determining applications and an extract from the relevant guidance is attached **at Appendix C**.

3.6 Should the application be granted Staffordshire Police, a responsible authority under the Act, have negotiated and agreed with the applicant alternative conditions and hours to those proffered in Section M in order to promote the licensing objectives. This will mean that all conditions currently proffered in Section M of the application will be replaced by those which are attached at **Appendix D**

4. CONCLUSION

4.1 Members are asked to determine whether the application for a new premises licence as outlined in paragraph 3.2 above in respect of The Xo Lounge be granted, with or without conditions, having due regard to the guidance issued by the Secretary of State under section 182 of the Licensing Act 2003.

4.2 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy published on 7 January 2016.

4.3 Members may not refuse applications in whole or in part or attach conditions to licences (other than those proffered by applicants in their operating schedules), unless it is appropriate to do so in order to promote one or more of the four licensing objectives.

4.4 Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

4.5 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will" is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

4.6 The licensing authority should give its decision within 5 working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it.

5. RECOMMENDATION

5.1 The Committee is asked to consider the application for a Premises Licence in respect of Xo Lounge.

6. FINANCIAL IMPLICATIONS

6.1 The fees for a premises licence are payable on application. They are not refundable should the application be refused.

6.2 Where an application is refused, or granted with conditions, the applicant has the right of appeal to Magistrates' Court against the decision and, if granted by the court, any costs awarded would need to be met by the Council.

6.3 Similarly a person who made relevant representations has a right of appeal against a decision to grant a licence, or the conditions imposed upon it.

8. EQUALITY, DIVERSITY & HUMAN RIGHTS IMPLICATIONS

8.1 Article 6 of the Human Rights Act 1998, states that in determination of a persons civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

8.2 Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence.

- 8.3 Part II, Article 1 states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law and by the general principles on international law.

9. CRIME AND SAFETY ISSUES

- 9.1 Under the Crime and Disorder Act 1998, particularly Section 17, local authorities must have regard to the likely effect of the exercise of their functions on, and do all they can to prevent crime and disorder in their area. The Licensing Authority will have regard to the likely impact of licensing on related crime and disorder in the District, particularly when considering the location, impact, operation and management of licensable activities.

Background Documents:

Appendix A – Copy of application for a new premises licence

Appendix B – Copy of representations

Appendix C – Extract from Section 182 Guidance

Appendix D – Copy of conditions agreed with Staffordshire Police