

AGENDA

5. **APPLICATION TO VARY A PREMISES LICENCE**
ISABEL'S BAR & RESTAURANT, 26 STATION STREET, BURTON UPON TRENT, DE14 1AU

The Report of the Head of Legal and Regulatory Services regarding an Application to Vary a Premises Licence under the Licensing Act 2003.

Reason for consideration by the Committee

The Application has received a relevant Notice from a Responsible Authority, namely, Staffordshire Police Licensing Department via email dated Thursday 19th September 2024 at 1634hrs.

1. **Application**

An Online Application was received on Friday 23rd August 2024 from Ms Michele PHILLIPS, an Agent acting on behalf of the Premises Licence Holder, NJD Group Bars Ltd, to Vary a Premises Licence under the Licensing Act 2003 in relation to Isabel's Bar & Restaurant, 26 Station Street, BURTON UPON TRENT, DE14 1AU.

A copy of the Application is attached as **Appendix 1**.

Applicant's Name:	Isabel's Bar & Restaurant
Premises Address:	26 Station Street BURTON UPON TRENT DE14 1AU
Premises Licence Number:	PL1101

A Site Plan is attached to the report as **Appendix 2**.

A copy of the current Premises Licence and Summary, PL1101 along with the Plan of the Licensable areas, is attached as **Appendix 3**.

1.1 **Current Licensable Activities and Hours** – see Appendix 3

e) **Performances of Live Music (Indoors)**

Monday to Sunday	0800 to 0100hrs
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f) **Playing of Recorded Music (Indoors)**

Monday to Sunday	0800 to 0100hrs
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g) **Performances of Dance (Indoors)**

Monday to Sunday	0800 to 0100hrs
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i) **Late Night Refreshment (Indoors)**

Monday to Sunday	2300 to 0100hrs
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j) **Supply of alcohol for consumption ON the Premises only:**

Monday to Sunday	0800 to 0100hrs
New Year's Eve	0100 to 0800hrs

l) **The Opening hours of the Premises:**

Monday to Sunday	0800 to 0130hrs
New Year's Eve	0130 to 0800hrs

1.2 **Proposed Licensable Activities**

The proposed Variation is to Vary the Licensable Hours for the Sale of Alcohol to both On and Off Sales along with Live Music - Indoors (E), Recorded Music - Indoors (F), Performances of Dance - Indoors (G) and Anything of a similar description to that falling within E, F and G (H) on Monday to Sunday until 0400hrs.

Late Night Refreshment - Indoors is also requested on a Monday to Sunday until 0400hrs.

Hours Premises Open to the Public is requested until 0430hrs Monday to Sunday.

See Appendix 1 – Parts 2 and 4

1.3 Proposed Hours - see Appendix 1 – Part 4

e) Performances of Live Music (Indoors)

Monday to Sunday	0800 to 0400hrs
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f) Playing of Recorded Music (Indoors)

Monday to Sunday	0800 to 0400hrs
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g) Performances of Dance (Indoors)

Monday to Sunday	0800 to 0400hrs
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h) Anything of a similar description to that falling within e, f or g – *not specified whether Indoors / Outdoors or both*

Monday to Sunday	0800 to 0400hrs
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i) Late Night Refreshment (Indoors)

Monday to Sunday	2300 to 0400hrs
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j) Supply of alcohol for consumption ON and OFF the Premises:

Monday to Sunday	0800 to 0400hrs
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l) The Opening hours of the Premises:

Monday to Sunday	0800 to 0430hrs
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1.4 Designated Premises Supervisor

Kevin GAMBLES – Personal Licence number KUHPA3188 issued by Kingston Upon Hull Local Authority

2. Relevant Representations

Representations have been received from a Responsible Authority namely Staffordshire Police Licensing Department dated 23rd August 2024.

The Representation is attached to the report at **Appendix 4**

2.1 **Responsible Authorities**

Planning Department at East Staffordshire Borough Council's response dated 23rd August 2024 is attached at **Appendix 5**

No responses have been received from the following:

Staffordshire Trading Standards

Staffordshire Fire and Rescue Service

Environmental Health at East Staffordshire Borough Council

Enforcement Team at East Staffordshire Borough Council

Staffordshire Safeguarding Children's Board

Development Services

Health and Safety Team

Director of Public Health (NHS)

Immigration

2.2 **Other Persons**

None

3. **Law**

Section 35 (2) Licensing Act 2003 – provides that, subject to Subsection (3), and Section 36(6) the Authority must Grant the Application.

- (3) Where relevant Representations are made, the Authority must –
- (a) hold a Hearing to consider them, unless the Authority, the Applicant and each person who has made such Representations agree that a Hearing is unnecessary; and
 - (b) having regard to the Representations, take such of the steps mentioned in Subsection (4) (if any) as it considers appropriate for the promotion of the Licensing Objectives.
- (4) The steps are –
- (a) to modify the Conditions of the Licence;
 - (b) to reject the whole or part of the Application;
- 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.
- (5) In this Section "**relevant Representations**" means Representations which –
- (a) are about the likely effect of the Grant of the Application on the promotion of the Licensing Objectives, and
 - (b) meet the requirements of Subsection (6).

- (6) The requirements are –
- (a) that the Representations are made by a Responsible Authority or Other Person within the period prescribed period under Section 17 (5) (C) by virtue of Section 34 (5);
 - (b) that they have not been withdrawn; and
 - (c) in the case of representations made by a person who is not a Responsible Authority, that they are not, in the opinion of the relevant Licensing Authority, frivolous or vexatious.
- (7) Subsections (2) and (3) are subject to Sections 19 to 21 (which require certain Conditions to be included in Premises Licences).

Section 36(6) Licensing Act 2003 - A Licence may not be varied under Section 35 so as –

- (a) to extend the period for which the Licence has effect; or
- (b) to vary substantially the Premises to which it relates.

Section 4(2) Licensing Act 2003 – The Licensing objectives are:

- (a) the Prevention of Crime and Disorder;
- (b) Public Safety;
- (c) the Prevention of Public Nuisance;
- (d) the Protection of Children from Harm.

4. **National Guidance – Guidance issued under Section 182 of the Licensing Act 2003**

Please see following document for National Guidance relating to the Application

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003 - updated December 2023>

5. **Local Policy Considerations**

East Staffordshire Borough Council – Statement of Licensing Policy:

<https://www.eaststaffsbc.gov.uk/sites/default/files/docs/licensing/Licensing%20Act%202003%202020-2025%20Adopted%2024%20February%202020.pdf>

Licensing Objectives:

- 3.1 In carrying out its duties under the Act, the Licensing Authority will actively promote the Licensing objectives, namely:
- The Prevention of Crime and Disorder
 - Public Safety
 - The Prevention of Public Nuisance, and
 - The Protection of Children from Harm
- 3.2 The Licensing Authority will view each objective with equal importance and pay due regard to any Guidance issued by the Secretary of State under Section 182 of the Act. However, it should be stressed that irrespective of the content of this Policy, it is the right of any individual or Company to make an Application under the Act and have the facts of the case considered on its individual merits
- 3.3 The Licensing Authority has the ability to deviate from both the Guidance issued by the Secretary of State and/or this Statement of Licensing Policy where the facts of a case merit it. If such an occasion does arise then full reasons for such deviation will be given as part of the published decision.
- 3.4 Nothing in this Statement of Policy should be seen as restricting or overriding the right of a person to make representations on an Application or to seek a Review of a Licence or Certificate, in circumstances where the Act allows it.

Scope of the Licensing Regime:

- 4.4 The scope of the Policy covers new Applications, and where appropriate Renewals, Transfers and Variations of Licences and Certificates including where applicable Temporary Premises Licences. The Policy also includes the Review of Licences and Certificates, the outcome of which could lead to the Revocation of the Licence or Certificate.
- 4.8 The Licensing regime is concerned with regulating the carrying on of Licensable Activities on Licensed Premises, by qualifying Clubs and at temporary events and any Conditions imposed will be focused on matters which are within the control of individual Licensees and others in possession of relevant Authorisations. Therefore, any Conditions will centre on the Licensed Premises or event and the vicinity of those Premises or event. The Licensing Authority will primarily focus on the direct impact of the Activities taking place at the Licensed Premises on members of the public living, working or engaged in normal activity in the area concerned.

Principles of Operation - The Application Process

- 8.4 Where an objection is received in relation to the Grant or Renewal of a Licence for any purpose regulated by the Act, the matter will be determined in accordance with the terms of this Licensing Policy. It is for the Licensing Authority to decide in the first instance whether or not representations are relevant. It is the impact of issues relating to the four Licensing objectives that is the key consideration. The Objection will be considered in accordance with the delegation criteria listed in Table 1.

Table 1 Delegation of Functions

Matter to be dealt with	Licensing and Gambling Act Sub Committee	Officers
Application for Personal Licence	If a Police or Immigration Enforcement objection	If no objection made
Application for Personal Licence with unspent Convictions	If a Police objection	If no objection made
Application for Premises Licence/Club Premises Certificate	If a relevant representation made	If no relevant representation made
Application for Provisional Statement	If a relevant representation made	If no relevant representation made
Application to Vary Premises Licence/Club Premises Certificate	If a relevant representation made	If no relevant representation made
Application to Vary Designated Premises Supervisor	If a Police objection	All other cases
Request to be removed as Designated Premises Supervisor		All cases
Application for Transfer of Premises Licence	If a Police objection	All other cases
Applications for Interim Authorities	If a police objection	All other cases
Application to Review Premises Licence/Club Premises Certificate	All cases	
Decision on whether a Representation is irrelevant frivolous vexatious etc.		All cases
Decision to object when Local Authority is a Consultee and not the relevant Authority considering the Application	All cases	
Determination of objection to a Temporary Event Notice	All cases	
Determination of Application to Vary Premises Licence at Community Premises to include alternative Licence Condition	If a Police objection	All other cases
Decision whether to consult other Responsible Authorities on Minor Variation Application		All cases
Determination of Minor Variation Application		All cases

Licensing Hours:

- 13.1 As regards the imposition of Licensing hours, where representations are received, the Licensing Authority will judge each Application on merit. The Licensing Authority will have regard to the overall impact of the Licensed Premises on the local amenity and any proposals the Applicant might submit to mitigate such impact. The Licensing Authority recognises that longer Licensing hours can be a means of preventing large concentrations of people accumulating in areas which then become overly congested.
- 13.2 The opening hours granted on a Premises Licence should be seen as the maximum rather than mandatory opening hours for the Premises.

Licensing Conditions:

- 14.1 One of the key concepts of the Act is for Conditions only to be attached to Licences/Certificates that are tailored to the individual Premises or event. Unlike previous regimes, standard Conditions will not be applied to all Premises irrespective of their operating practice and circumstances. Ideally, Applicants will identify the Conditions that are appropriate to their Premises and address the four Licensing Objectives, and include them within their Operating Schedule. These will then be translated into Conditions, which will be attached to the Licence.
- 14.2 The Licensing Authority will only attach Conditions that are reasonable, proportionate and strictly necessary for the promotion of the Licensing objectives. There is a need to avoid measures, as far as possible, that deter live music, dancing and theatre by imposing indirect costs of a disproportionate nature.
- 14.4 The Licensing Authority recognises that some Conditions may address more than one of the Licensing objectives
- 14.5 In deciding if any of the attached or additional Conditions would be appropriate, the Applicant should consider amongst other things:
- The type, layout, construction and size of Premises
 - Its location
 - Its clientele
 - The number of people attending
 - The age profile of the customers
 - Its proposed hours of operation
 - The nature of any drinks promotions
 - The type(s) of entertainment to be provided
 - The times when the entertainment will be provided
 - The previous history of problems at or related to the Premises (including drug misuse and abuse of alcohol)
 - The ability of the Designated Premises Supervisor to control and supervise customer behaviour

The Prevention of Crime and Disorder

- 17.1 The essential purpose of the Licence or Certificate is to regulate behaviour on Premises and access to them where this relates to Licensable activities and the Licensing objectives. Conditions attached to Licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the Licence Holder and his staff or agents. They can however directly impact on the behaviour of those under the Licensee's direction when on their Premises or in the immediate vicinity of the Premises as they seek entry or leave.
- 17.2 There are a number of offences both within the Licensing Act 2003 and other Legislation that relate to Crime and Disorder and that Licensees should be familiar with. These offences stand in their own right and will not be duplicated as Conditions on any Licence/Certificate.
- 17.3 Appendix 3 contains the suggested Conditions from the Secretary of State's Guidance relating to Crime and Disorder

- 17.4 A 'Pubwatch' scheme operates within the East Staffordshire area and aims to counter individuals who threaten damage, disorder and violence or use or deal in drugs in their Premises by excluding them from Licensed Premises. The Licensing Authority is particularly supportive of such schemes and considers Premises should join where it is appropriate to do so. Licensed Premises sited within Burton and Uttoxeter Town Centre are particularly encouraged to join the Pubwatch scheme and if they are not members will be expected to demonstrate alternative controls, of at least the same effect, to counteract Crime and Disorder in relation to their Premises.
- 17.5 The Security Industry Authority also plays an important role in preventing Crime and Disorder by ensuring Door Supervisors are properly Licensed. The Authority will co-operate and work with the security industry.

Public Safety

- 18.1 The public safety objective is concerned with the physical safety, including fire safety, of the people using the relevant Premises and not with public health, which is dealt with in other legislation. Public safety includes the safety of performers appearing at any Premises.
- 18.2 Appendices 4 and 5 contain the suggested Conditions from the Secretary of State's Guidance relating to public safety.
- 18.3 The Authority has noted that from 1st October 2006 the Regulatory Reform (Fire Safety) Order 2005 replaced previous Fire Safety Legislation. Responsibility for complying with the order rests with the 'responsible person' who has control of Premises.
- 18.4 The Licensing Authority is familiar with the "Safer Clubbing Guide" and its Application to nightclubs and dance events. The Guide contains a number of suggestions and safeguards, which appropriate Premises should consider and include within their operating schedules as necessary.
- 18.5 There are a number of other key publications that relate to public safety at entertainment events, which the Licensing Authority would recommend to applicants. The details of these publications are reproduced in Appendix 3.

The Prevention of Public Nuisance

- 19.1 The public nuisance objective is designed to deal with the impacts of Licensable activities at specific Premises on persons living and working (including doing business) in the vicinity that is disproportionate and unreasonable. The main issues for concern will be noise nuisance, light pollution, noxious smells and litter.
- 19.2 The provision of welfare facilities such as toilets within Licensed Premises is relevant to the prevention of public nuisance. Adequate welfare provisions may prevent nuisance activities taking place within the street, such as urination. Licensees should therefore ensure that adequate facilities are provided within the Premises and include these details within their operating schedule.

- 19.3 Public nuisance is not defined within the Act but is given a broad Common Law definition. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbances affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons in the vicinity of the Licensed Premises.
- 19.4 The Licensing Authority will have regard to the powers available within the Anti-Social Behaviour Act 2003. This provides that if a noise from Licensed Premises is causing a public nuisance the local authority has powers to issue a closure order for up to 24 hours. This compliments the police powers under Part 8 of the 2003 Act.
- 19.5 Appendix 6 contains the suggested Conditions from the Secretary of State's Guidance relating to public nuisance.

The Protection of Children from Harm

- 20.1 The Act has tightened up on the controls relating to the sale and supply of alcohol to children with new and further principle offences contained within the Act itself. However the intention of the Act is to make Licensed Premises accessible to families and only limit access to children where it is necessary in order to prevent physical, moral or psychological harm to them. When deciding whether restrictions should be imposed, the Licensing Authority will examine the individual merits of each Application and only impose Conditions whether the circumstances justify them.
- 20.2 Appendix 7 contains the suggested Conditions from the Secretary of State's Guidance relating to the protection of children from harm.
- 20.3 The protection of children from harm includes the protection of children from moral, psychological and physical harm, and this would include the protection of children from too early an exposure to strong language, sexual expletives, violence or frightening images, for example, in the context of film exhibitions, or where adult entertainment is provided.
- 20.4 Aspects of an Application that would be likely to raise concerns in relation to access by children would include:
- Where entertainment or services of an adult or sexual nature are commonly provided;
 - Where there have been convictions of members of the current staff at the Premises for serving alcohol to minors or with a reputation for underage drinking;
 - With a known association with drug taking or dealing;
 - Where there is a strong element of gambling on the Premises (but not, for example, the simple presence of a small number of cash prize gaming machines); and
 - Where the supply of alcohol for consumption on the Premises is the exclusive or primary purpose of the services provided at the Premises.
- 20.5 It is not possible to provide an exhaustive list of the entertainment or services that are of an adult or sexual nature, therefore a common sense approach will be taken to interpretation. However such entertainment or services would also include entertainment involving strong and offensive language.

- 20.6 Where Conditions are required for the prevention of harm to children, a range of alternatives will be considered as methods for limiting access. These will include:
- Limitations on hours when children may be present;
 - Limitations on the exclusion of the presence of children under certain ages when particular specified activities are taking place;
 - Limitations on the parts of the Premises to which children might be given access;
 - Age limitations (below 18);
 - Requirements for accompanying adults (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
 - Full exclusion of those people under 18 from the Premises when any licensable activities are taking place.
- 20.7 The Licensing Authority, Staffordshire County Council Trading Standards and the Police take a very serious view of the persistent and illegal sale of alcohol and other age-restricted goods. Together with Trading Standards, the Licensing Authority will continue to seek to ensure that illegal sales of alcohol and other age-restricted goods is reduced and ultimately eradicated.
- 20.8 The sale of alcohol to minors (under 18 years of age) is a Criminal Offence and Trading Standards has, over time, worked to advise the off-Licence trade on how to set up systems to avoid sales taking place. (Advice and materials from Trading Standards is not chargeable). Trading Standards will continue to regularly conduct covert test purchasing exercises with volunteers in response to complaints and local intelligence.
- 20.9 The Licensing Authority will maintain close contact with the Police, Young Offender's Team and Trading Standards Officers regarding unlawful activities and share actions and intelligence where appropriate.

Table 2. Offences Relating to Children

Section	Offence	Prosecuting Authority
Section 145	Unaccompanied children prohibited from certain Premises	Police/and or Licensing Authority
Section 146	Sale of alcohol to children	Police, Licensing Authority and /or local Weights and Measures
Section 147	Allowing the sale of alcohol to children	Police, Licensing Authority and /or local Weights and Measures
Section 147a	Persistently selling alcohol to children	Police, and /or local Weights and Measures
Section 149	Purchase of alcohol by or on behalf of children	Police, and/or Licensing Authority
Section 150	Consumption of alcohol by children	Police, and/or Licensing Authority
Section 151	Delivering alcohol to children	Police, and/or Licensing Authority
Section 152	Sending a child to obtain alcohol	Police, and/or Licensing Authority
Section 153	Prohibition of unsupervised sales by children	Police, and/or Licensing Authority

- 20.10 Attached at Appendix 8 is Guidance issued by Staffordshire Trading Standards detailing suggested actions that Licensees could take in order to show that they are addressing the issue of underage sales of alcohol. Applicants are advised to consider whether any or all of the suggested actions are appropriate to include within their operating schedule.
- 20.11 The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. The Code is an important weapon in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in Licensed Premises in a manner that may appeal to or attract minors. The Licensing Authority commends the Code to Licence Holders and Applicants.
- 20.12 Although the Act is designed not to unnecessarily restrict access to Licensed Premises by children, equally Conditions will not be imposed on Licences requiring general access for children this will be left to the discretion of the Licensee.
- 20.13 The Licensing Authority recognises the Director for Families and Communities of Social Care and Health for Staffordshire County Council and Staffordshire Police as the responsible Authorities for advising the Licensing Authority on matters relating to the Licensing objective to protect children from harm.

Licensing Authorities should give considerable weight to representations about Child Protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible Authority, or other person, presents evidence to the Licensing Authority linking specific Premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the Licensing authority should also consider what action is appropriate to ensure this Licensing objective is effectively enforced. In relation to Applications for the grant of a Licence in areas where evidence is presented on high levels of alcohol-related harms in person aged under 18, it is recommended that the Licensing Authority considers what Conditions may be appropriate to ensure that this objective is promoted effectively.

- 20.14 In the case of Premises giving film exhibitions, the Licensing Authority will expect Licensees or Clubs to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification. A mandatory Condition to this effect will be applied to all Premises licenses and Club Premises Certificates where the exhibition of films is included as part of the Application.

10. **Details of negotiations that have been carried out**

A copy of the letter of representation has been served on the Premises Licence Holder, NJD Group Bars Ltd, Agent – Ms Michele PHILLIPS on the 20th September 2024.

11. **Decision Options**

Vary Premises Licence

- a. Grant the Application with or without additional Conditions necessary to promote the Licensing Objectives
- b. Grant the Application excluding any of the Licensable Activities from the scope of the Licence
- c. Refuse the Application

12. **Appeals (Variations)**

Application refused – Applicant may Appeal

Application Granted – person having made “relevant representation” may Appeal

Application granted and Applicant objects to the Conditions attached – Applicant may Appeal

Application granted and challenge to modification/non-modification of Conditions considered necessary – person having made “relevant representations” may Appeal

13. **Details of who has been invited to attend**

The Premises Licence Holder, NJD Group Bars Ltd and/or their Representative
Staffordshire Police Licensing Department

14. **Date and Time of Hearing**

Friday 18th October 2024 at 1000hrs

15. **List of Appendices**

Appendix 1 - Copy of Application dated 23rd August 2024
Appendix 2 - Site Plan (to follow)
Appendix 3 - Copy of the current Premises Licence and Plan
Appendix 4 - Representation from Staffordshire Police Licensing Department dated 19th September 2024
Appendix 5 - Planning, ESBC response dated 23rd August 2024

Report created by Helen McKENNA, Licensing Officer