

Report to:	Licensing Panel
Relevant Officer:	Sharon Davies, Head of Licensing Services
Date of Meeting :	25 August 2016

APPLICATION TO REVIEW A LICENCE – Ned Kelly’s

1.0 Purpose of the report:

1.1 To consider an application by Lancashire Constabulary to review the Premises Licence issued in respect of Ned Kelly’s, 19-23 Clifton Street.

2.0 Recommendation(s):

2.1 The panel is requested to determine the review application.

3.0 Reasons for recommendation(s):

3.1 This application must be determined by a panel.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council’s approved budget? Yes

3.3 Other alternative options to be considered:

None, once an application for a review is received it must be considered by the Licensing Panel.

4.0 Background Information

4.1 Ned Kelly’s, 19-23 Clifton Street has the benefit of a Premises Licence authorising the sale of alcohol for consumption on the premises and regulated entertainment 11.00 – 04.00 Monday – Saturday, 11.00 – 02.30 Sunday. Late night refreshment is also permitted until 04.00 Monday – Saturday, 02.30 Sunday.

- 4.2 On 3rd August 2016 the Licensing Service received an application from Lancashire Constabulary for a summary review of this licence under section 53A Licensing Act 2003. A copy of the application is attached at Appendix 4a. An application of this type must be accompanied by a certificate signed by an officer of at least Superintendent confirming that in their opinion the premises are associated with serious crime, serious disorder or both serious crime and disorder and that other procedures under the Licensing Act 2003 are inappropriate.
- 4.3 In this case the certificate, signed by Superintendent Evans states *“there is an urgency in this case owing to the severity of the allegations made against the licensee, who is currently remanded in prison owing to the allegations of a serious sexual offence that occurred on the premises. The nature of the offence is such that it is untenable for the premises to continue to trade owing to the risk posed to the public and the staff owing to the practices that have clearly been allowed to occur under the current management.”*
- 4.4 Once an application for a summary review is received the Licensing Authority must, within 48 hours of receipt, consider whether it is necessary to take any interim steps. The interim steps that may be taken are:
- Modification of licence conditions,
 - Exclusion of the sale of alcohol by retail from the scope of the licence,
 - Removal of the Designated Premises Supervisor, and
 - Suspension of the licence.
- 4.5 On 4 August 2016 a Licensing Panel determined that the appropriate interim step to be taken was suspension of the licence for the following reason – *“Based on the fact that the premises licence holder is in custody and no contact was made with the licensing service until the review was submitted and the current management of the premises appears to be chaotic, for example not knowing the whereabouts of the DPS and then proposing to nominate an alternative DPS but being unclear as to her name, the licensing authority concluded that the only appropriate step available to them was to suspend the licence with immediate effect”*
- 4.6 The consideration of the interim steps was made in the absence of the Premises Licence Holder. It is however open to the Licence Holder to make representations against the interim steps that have been taken. If such representations are received a hearing must be arranged to take place within 48 hours and both the licence holder and the Police would be invited to attend. At the time of writing this report no such representations have been received.
- 4.7 The Licensing Authority is required to hold a review of the premise licence within 28 days after the day of receipt of the initial summary review application. This hearing must be held even if the Police ask to withdraw their application or representations.

- 4.8 At the time the application was received the premises licence holder was William Shayne Kelly and the designated premises supervisor was Melanie Kate Brocklehurst. Mr Kelly had only transferred the licence into his name at the beginning of April 2016.
- 4.9 On 10 August 2016 the Licensing Service received an application from Louise Byrne to transfer the Premises Licence into her name. It is understood by the licensing service that Louise Byrne is the sister of the original licence holder William Shayne Kelly.
- 4.10 Representations concerning the review have been submitted by the Child Protection Licensing Officer.

4.11 **Local policy considerations**

None

4.12 **National policy considerations**

Section 11 reviews is relevant in particular:

11.20 – In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

If a suspension or revocation is being considered 11.23 should be taken into account “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. 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.”

The panel have the following powers:

1. Take no action
2. Modify the conditions of the licence (by adding removing or varying conditions)
3. Exclude a licensable activity from the licence
4. Remove the DPS
5. Suspend the licence for up to three months
6. Revoke the licence.

4.13 Observations

This licence has the following conditions endorsed upon it:

Annex 1 - Mandatory conditions

1 Alcohol shall not be sold or supplied except during permitted hours. Permitted hours means:

- a) On Monday to Saturday 11.00 to 04.00 hours the following day
- b) On Sunday 11.00 to 02.30 hours the following day
- c) On Bank Holiday Sundays 11.00 to 04.00 hours the following day
- d) On Easter Sunday 11.00 to 04.00 hours the following day
- e) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or if there are no permitted hours on the following day, midnight on 31st December)

The above restrictions do not prohibit:

- a) During the first thirty minutes after the above hours the consumption of the alcohol on the premises;
- b) During the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- c) During the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;
- d) Consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the licensed premises;
- e) The ordering of alcohol to be consumed off the premises, or the dispatch by the vendor of the alcohol so ordered;
- f) The sale of alcohol to a trader or club for the purposes of the trade or club;
- g) The taking of alcohol from the premises by a person residing there; or
- h) The supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or
- i) The supply of alcohol for consumption on the premises to person employed there for the purposes of business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

- 2 Subject to the following paragraphs, the permitted hours on weekdays shall extend until 04.00 hours in the morning following except that -
 - a) The permitted hours shall end at midnight on any day on which music and dancing is not provided after midnight; and
 - b) On any day that music and dancing end between midnight and 4am, the permitted hours shall end when the music and dancing end.

- 3 Except on Sundays immediately before bank holidays, the permitted hours on Sundays shall extend until 02.30 hours in the morning following, except that -
 - a) The permitted hours shall end at midnight on any Sunday on which music and dancing is not provided after midnight;
 - b) Where music and dancing end between midnight on any Sunday and thirty minutes past midnight, the permitted hours on that Sunday shall end when the music and dancing end.

- 4 On Sundays immediately before bank holidays, the permitted hours shall extend until 04.00 hours in the morning following, except that -
 - a) The permitted hours shall end at midnight on any Sunday on which music and dancing is not provided after midnight;
 - b) Where music and dancing end between midnight on any Sunday and 4am (or midnight and 6am for Easter Sunday), the permitted hours on that Sunday shall end when the music and dancing end.

- 5 No supply of alcohol may be made under the premises licence -
 - a) At a time when there is no designated premises supervisor in respect of the premises licence,

or

 - b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

- 6 Every supply of alcohol under the premise licence must be made or authorised by a person who holds a personal licence.

- 7 (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises -

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to -

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

8 The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

9 (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the

policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either a holographic mark, or an ultraviolet feature.

10 The responsible person must ensure that -

(a) where any of the following alcoholic drinks are sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

11 (1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

(2) In this condition:-

- a. "permitted price" is the price found by applying the formula $P = D + (D \times V)$, where-
 - i. P is the permitted price,
 - ii. D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - iii. V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- b. "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- c. "relevant person" means, in relation to premises in respect of which there is in force a premises licence-
 - i. the holder of the premises licence,
 - ii. the designated premises supervisor (if any) in respect of such a licence, or
 - iii. the personal licence holder who makes or authorises a supply of alcohol under such a licence;

- d. "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- e. "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

(3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny.

(4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

12 No person under 18 will be allowed access to the premises.

13 Exhibition of Films:

Where the film classification body is specified in the licence, unless the below applies, admission of children must be restricted in accordance with any recommendations made by that body

Where -

a) The film classification body is not specified in the licence,

or

b) The relevant licensing authority has notified the holder of the licence that this condition is applied to the film in question,

Admission of children must be restricted in accordance with any recommendation made by that licensing authority.

14 Any individual employed on the premises to carry out a security activity must be licensed by the Security Industry Authority.

15 Music must not be excessive in volume and must be under the control of the holder of the licence or his duly appointed representative. The requirements of the Licensing Authority's Environmental Health Division in relation to levels of noise produced inside or outside the premises as a result of, incidental to,

or arising from the public entertainment, shall be complied with.

Annex 2 - Conditions consistent with the Operating Schedule

- 1
 - a) On Bank Holiday Sundays, the provision of Regulated Entertainment 'B', 'D', 'E', 'G' H, and the provision of Entertainment Facilities 'I' and 'J', along with Late Night Refreshment, are permitted until 04.00 hours the following day.
 - b) On Easter Sunday Regulated Entertainment and Late Night Refreshment are permitted until 04.00 hours the following day.
 - c) On the above occasions the opening hours of the premises shall be extended until 05.00
 - d) In the event of a screening of any international sporting event involving any of the countries from the United Kingdom and the Republic of Ireland which falls outside the current permitted hours on the premises licence to permit the premises to open one hour before the start of the event and finishing one & half hours after the end of the event, the details of the transmission to be notified to the Police 7 days beforehand and provided the Police have not objected to the additional hours within 72 hours of being notified.

- 2 CCTV will be installed internally and externally at the premises and will comply with the following:
 - The CCTV system shall be installed, maintained and operated to the reasonable satisfaction of Lancashire Constabulary. All public areas of the premises are to be covered by the system. The system will incorporate a camera covering each of the entrance doors and will be capable of providing an image which is regarded as identification standard.
 - The system will display on any recording the correct time and date of the recording.
 - The system will make recordings during all hours the premises are open to the public.
 - VCR tapes or digital recording shall be held for a minimum of 31 days and 28 days respectively, after the recording is made and will be made available to the Police or any authorised persons acting for a Responsible Authority for inspection upon request.
 - The system will, as a minimum, record images of the head and shoulders of all persons entering the premises.

- 3 A staff member who is conversant with the operation of the CCTV system will be on the premises at all times the premises are open to the public. This staff member will be able to show recent data or footage with the absolute minimum of delay when requested to a Police Officer or to a Local Authority Enforcement Officer.

- 4 Appropriate signage alerting customers to CCTV recording shall be displayed in conspicuous positions on the premises.
- 5 Annual documented maintenance checks of the CCTV system, including the recording system will be undertaken by the Designated Premises Supervisor to ensure that the system is in good working order and fit for purpose.
- 6 The Police Licensing Unit shall be notified on any occasion when the CCTV or radio system is to be inoperative for a period in excess of one working day and shall provide a certificate from a competent person stating the reason for the system being inoperative and the measures which have been taken to satisfy the licence conditions.
- 7 Any person who appears to be intoxicated or who is behaving disorderly will not be allowed entry to the venue. Any person within this venue who appears to be intoxicated or who is behaving disorderly will be given care and consideration in leaving the venue.
- 8 The licence holder is to support and rigorously enforce the Challenge 25 proof of age policy. Any person who looks or appears to be under the age of 25 shall be asked to provide identification that they are over the age of 18. The following are the only forms of identification acceptable:
 - i. UK photo driving licence
 - ii. Passport
 - iii. Proof of Age Standards Scheme cardOR any other nationally or locally approved form of identification which may be introduced in the future.
- 9 All staff to have received suitable training in relation to the proof of age scheme to be applied upon the premises. Records to evidence this will be made available to an authorised officer upon request.
- 10 Adequate first aid provision is available at all times to include having at least one trained first-aider on the premises at all times the premises are being operated.
- 11 Where a boxing/wrestling ring is used it will be constructed by a competent person and shall be inspected by a competent authority before use and any material used to form the skirt of the ring shall be flame retardant.
- 12 An adequate number of licensed door supervisors will be on duty as appropriate to any risk assessment. However, there will always be at least one

door supervisor employed at the premises from 20.00 until closing time on Thursdays to Sundays.

- 13 All door staff employed at the entrance / exit of the licensed premises will wear a reflective jacket / tabard of a design approved by the Lancashire Constabulary.
 - 14 A record shall be kept on the premises of every person employed at the premises as a door supervisor. The record is to contain the following details:
 - (i) Name and address
 - (ii) Date of birth
 - (iii) SIA licence number
 - (iv) Time duty commenced and time duty terminated
- Said records are to be made available for inspection upon demand by a Police officer or any authorised officer.
- 15 Appropriate measures will be taken to ensure staff prevent the removal of bottles or glasses from the curtilage and grounds of the licensed premises.
 - 16 At least one personal licence holder will be available on the licensed premises while the supply or sale of alcohol is being undertaken (whose identity will be known to all other staff engaged in the supply or sale of alcohol) except in the case of emergency.
 - 17 The premises are operated in accordance with the principles outlined by the 'Nightsafe' Initiative, as are relevant to those premises, and indicated in the associated leaflet.
 - 18 The premises shall be operated in participation with the 'Pubwatch' and 'Radiolink' schemes.
 - 19 The Radiolink equipment will be 'live' and will be monitored by the Head Doorman or another responsible person while the licensed premises are open for business.
 - 20 The premises shall be operated in compliance with the recommendations contained in Safer Clubbing.
 - 21 Another member of staff shall be nominated to act for the Designated Premises Supervisor, in their absence, whose identity is known by all other staff when such absence occurs.

- 22 Risk assessments carried out by or on behalf of the Licence holder which relate to a licensing objective will be available for inspection by an officer or a Responsible Authority.
- 23 The premises shall maintain a drinks pricing policy which complies with any Local Authority resolution made in accordance with approval from the Licensees Forum or any successor liaison body recognised by the Licensing Authority.
- 24 Where there is reasonable suspicion that drugs are being carried, the licensee shall ensure that the outer clothing, pockets and bags of those entering the venue are searched by a trained staff member of the same sex.
- 25 Clearly visible notices, in a form prescribed by the Council, shall be displayed advising those attending that 1. It is a condition of entry that customers agree to be searched and 2. Police will be informed if anyone is found in possession of controlled substances or weapons.
- 26 Security arrangements are sufficient to discourage the sale and consumption of drugs and shall ensure such arrangements include regular checks of toilet areas.
- 27 Any customers known to have been previously convicted of committing criminal offences relating to drugs shall be excluded from the premises.
- 28 Records of incidents involving the use and/or detection of drugs and make those records available for inspection.
- 29 Confiscated and found drugs shall be stored, disposed, transferred in accordance with procedures agreed with the Lancashire Constabulary.
- 30 A drugs prevention strategy for the venue shall be developed and applied. The strategy shall include arrangements for the location of posters and the distribution of other information relating to drugs risks, the dangers associated with drugs and the legal provisions relating to drug use.
- 31 During the final hour of daily trading appropriate announcements are made or images are projected to remind patrons of the need to leave the premises without causing annoyance, nuisance or disturbance to local residents and to advise patrons of any taxi free-phone or collection arrangements available upon the premises.
- 32 The volume of amplified sound used in connection with entertainment shall at all times be under the control of the licensee or management and the

controlling mechanism shall be operated from a part of the premises inaccessible to the public.

- 33 Frequent collection of glasses and bottles will be undertaken to ensure that empty containers do not accumulate in or around the licensed premises.
- 34 A clear, legible and conspicuous notice requesting patrons to avoid causing noise, nuisance or disturbance to local residents shall be displayed at every exit.
- 35 All external windows and doors should be closed after 9pm, except in the case of an emergency.
- 36 Noise from any Regulated Entertainment or Mechanical Ventilation shall be inaudible within the nearest sensitive properties or, at the discretion of the Local Authority, shall not exceed some other pre-agreed limit, which does not cause unreasonable disturbance to the residents of these properties or their guests.
- 37 Vibration produced as a result of any Regulated Entertainment shall not be perceptible in any adjoining or nearby sensitive properties.
- 38 With the exception of bottled beers all alcoholic drinks will be served in polycarbonate or other appropriate non-glass vessels after 19.00 Monday to Thursday. On Fridays, Saturdays and Sundays, all alcoholic drinks (including bottled beers) are to be sold in plastic (or similar) containers only.
- 39 Club Scan or another similar system approved by Lancashire Constabulary is to be used on the premises for all customers who appear to be under the age of 25 at all times licensable activities are undertaken on the premises, apart from in emergencies duly notified to Lancashire Constabulary.
- 40 An incident book will be maintained, in which shall be recorded
 - a. All incidents of crime and disorder
 - b. Refused sales to drunken persons
 - c. A record of any person refused admission or asked to leave the premises
 - d. Details of occasions upon which the Police are called to the premises
 - e. The use or discovery of drugs

That book shall be available for inspection by a Police Officer or authorised person.

- 41 The maximum number of persons to be accommodated in the premises at any one time shall be 650. Each floor capacity to be guided by Fire Safety.
- 42 No person under the age of 18 years of age will be admitted into the premises at any time. Appropriate notices will be displayed.
- 43 No entertainment of an adult or sexual nature will take place on the premises.

4.14 Does the information submitted include any exempt information? No

4.15 **List of Appendices:**

Appendix 4a: Application (Exempt from publication)
Appendix 4b: Representations by the Child Protection Licensing Officer
(Exempt from publication)

5.0 Legal considerations:

5.1 Please see local and national policy in the background information.

6.0 Human Resources considerations:

6.1 None

7.0 Equalities considerations:

7.1 None

8.0 Financial considerations:

8.1 None