

Name of meeting: Licensing Panel

Date: Tuesday 15th October 2019, at 09:30am – Meeting Room 2, Huddersfield Town Hall, Ramsden Street, Huddersfield

Title of report: Application for Review Hearing under S51 Licensing Act 2003: Dixy Chicken, 19 Cross Church Street, Huddersfield HD1 2PY

Purpose of report: To determine the application

| | |
|---|--|
| Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards? | Not applicable |
| Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports?)</u> | Not applicable |
| The Decision - Is it eligible for call in by Scrutiny? | Not applicable |
| Date signed off by <u>Strategic Director</u> & name | Russell Williams – Group Leader Licensing (as agreed by Karl Battersby – Strategic Director – Economy and Infrastructure) |
| Is it also signed off by the Service Director (Finance)? | Not applicable |
| Is it also signed off by the Service Director for Legal Governance and Commissioning? | Not applicable |
| Cabinet member <u>portfolio</u> | Cllr Rob Walker |

Electoral wards affected: Newsome

Ward councillors consulted: Not Applicable

Public or private: Public

GDPR Implications: GDPR has been considered and appropriate sections of the report have been amended

1 Summary

- 1.1 On 20 August 2019, West Yorkshire Police made an application for the review of the premises licence at Dixy Chicken, 19 Cross Church Street, Huddersfield, HD1 2PY under Section 51 of the Licensing Act 2003. The applicant believes that the licensing objective of the prevention of crime and disorder is not being achieved at the premises.
- 1.2 Full details of the grounds for the review are contained in the attached review application at **Appendix A**.

2 Information required to take a decision

2.1 Background

- 2.1.1 Dixy Chicken at 19 Cross Church Street, Huddersfield was visited during a joint partnership operation on Thursday 7th August 2019.
- 2.1.2 West Yorkshire Police, UK Border Agency and the local authority visited a number of shops in the course of this operation to ensure they were trading within the scope of their premise licence and that no illegal persons were employed in the premises.
- 2.1.3 One individual was found to be employed at Dixy Chicken who had an expired student visa and who's right to remain in the UK had also expired.
- 2.1.4 Full details of the review application can be found at **Appendix A**.
- 2.1.5 The current premises licence was first issued on 21 November 2005, under premises licence number PR(N)0110; a copy of the premises licence is attached at **Appendix B**.

2.2 Licensing Policy

Members considering the application should take note of the Authority's Statement of Licensing Policy, which provides the following guidance on how Members should approach the application and representation:

1.0 – Executive Summary

1.2 In exercising its duties and responsibilities under the terms of the Licensing Act 2003, the Council will operate within the statements and procedures mentioned in this policy statement. Notwithstanding this statement, all applications will be treated on their merits and judged accordingly. The council will have regard to any relevant guidance issued by the Secretary of State in exercising its powers under the Act.

2.0 – Purpose and Scope of the Licensing Policy

2.7 The Licensing Authority recognises that each licence application must be considered on its own individual merits in the context of the four licensing objectives, and that unless relevant representations are received from responsible authority's or interested parties, there is no provision for a Licensing Authority to impose conditions on a licence other than those proposed within an application. Only conditions which have been volunteered by the applicant or which have been determined at a Licensing Panel hearing can be attached to a licence or certificate. If no relevant representations are made in respect of an application, the Licensing Authority is obliged to issue the licence on the terms sought.

Licensing Objectives.

- 1. Public Safety*
- 2. Prevention of crime & disorder*
- 3. Prevention of public nuisance*
- 4. Protection of children from harm*

2.3 Secretary of State Guidance

Members also need to consider statutory guidance issued, by the Secretary of State, under Section 182 of the Licensing Act 2003, the relevant parts of which may be found at **Appendix C**.

3 Implications for the Council

3.1 Working with People

Residents of Kirklees need to be confident that persons holding licences under the Licensing Act 2003 are in a position to uphold the 4 licensing objectives. Taking appropriate and necessary action against licence holders where they fall short of their duties under the Licensing Act 2003 will prevent harm to residents

3.2 Working with Partners

The Council's licensing team work closely with partnering agencies, classed as 'Responsible Authorities' under the Licensing Act 2003, these include Planning, West Yorkshire Police, Trading Standards, Environmental Health, Fire Service, and Safe Guarding Children team.

3.3 Place Based Working

Working closely with Responsible Authorities the Licensing Authority can address issues within the districts that make up Kirklees.

3.4 Improving outcomes for children

A key objective of the Licensing Act is the protection of children from harm, and any decision made by the Council, in its capacity as Licensing Authority, have to have regard to this objective.

3.5 Other (e.g. Legal/Financial or Human Resources)

In determining the application Members should have regard to the Authority's licensing policy statement and the Secretary of State's Guidance. The applicant or any other person who made relevant representations in relation to the application have a right of appeal to the Magistrates' court.

4 Consultees and their opinions

Consultation has taken place in accordance with the Act. There have been no matters arising from responsible authorities.

5 Next steps and timelines

5.1 When determining the review application Members, having had regard to the information in the application, may take any of the following steps as they consider appropriate:

- a) Modify the conditions of the premises 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;
- b) Exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)
- c) Remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- d) Suspend the licence for a period not exceeding three months;
- e) Revoke the licence.

5.2 Findings on any issues of fact should be on the balance of probability.

5.3 In arriving at a decision Members must have regard to the relevant provisions of statutory guidance and the licensing policy statement and reasons must be given for any departure.

5.4 The decision should be based on the individual merits of the application.

6 Officer recommendations and reasons

Members of the Panel are requested to determine the application

7 Cabinet portfolio holder's recommendations

Not applicable

8 Contact officer

Beth Jennings, Licensing Officer, Licensing Service
Tel: 01484 221000 ext. 71609
Email: beth.jennings@kirklees.gov.uk

9 Background Papers and History of Decisions

9.1 Appendix A – Review Application from West Yorkshire Police

9.2 Appendix B – Copy of Premises Licence PR(A)0110

9.3 Appendix C – Relevant sections of Secretary of State Guidance

10 Strategic Director responsible

Karl Battersby – Strategic Director Economy and Infrastructure

Tel: 01484 221000

Email: karl.battersby@kirklees.gov.uk

Appendix A



RESTRICTED

APPLICATION FOR THE REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE UNDER THE LICENSING ACT 2003

Please read the following instructions first

Before completing this form, please read the guidance notes at the end of the form. If you are completing this form by hand, please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I, (Insert name of applicant) **Richard Woodhead**

- Apply for the review of a Premises Licence under Section 51
- Apply for the review of a Club Premises Certificate under Section 87 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises or Club Premises details

Postal address of premises or, if none, Ordnance Survey map reference or description:

Dixy Chicken, 19 Cross church Street, Huddersfield.

Town/City: **Huddersfield**

Postcode: **HD1 2PY**

Name of premises licence holder or club holding club premises certificate (if known):

Number of premises licence or club premises certificate (if known): **PRN 0110**

Part 2 – Applicant details

Please 'check' appropriate box(es)

I am:

- An interested party (please complete A or B below)
 - a person living in the vicinity of the premises
 - a body representing persons living in the vicinity of the premises
 - a person involved in business in the vicinity of the premises
 - a body representing persons involved in business in the vicinity of the premises
- A responsible authority (please complete C below)
- A member of the club to which this application relates (please complete A below)

A – Details of individual applicant

Mr

Surname:

Forename(s):

I am 18 years old or over:

Current postal address if different from premises address:

Town/City:

Postcode:

Daytime contact telephone number:

E-mail address (optional):

RESTRICTED

B – Details of other applicant

Surname: Forename(s):
Address:
Town/City: Postcode:
Daytime contact telephone number:
E-mail address (optional):

C – Details of responsible authority applicant

Other title, e.g. R Mr
Surname: Woodhead Forename(s): Richard
Address: West Yorkshire Police Licensing, Flint Steet
Town/City: Huddersfield Postcode: HD1 6LG
Daytime contact telephone number: [REDACTED]
E-mail address (optional):

This application to review relates to the following licensing objective(s): (Please 'check' one or more boxes)

- (a) The prevention of crime and disorder
- (b) Public Safety
- (c) The prevention of public nuisance
- (d) The protection of children from harm

State the ground(s) for review (please read Guidance note 1):

The owner of the shop has being found employing an illegal worker who has not got the right to employment in the UK.

RESTRICTED

Please provide as much information as possible to support the application (please read Guidance note 2)

A joint partnership operation was put in place on Thur. 7th Aug 2019. The partners involved were West Yorkshire police, U.K. Boarder agency, and the local authority, where a number of shops were visited to ensure they were trading within the scope of the premises licence. The checks were also to ensure no illegal persons were employed in licensed premises.

When the Dixie chicken restaurant was visited, one [REDACTED] was found to be an illegal employee. [REDACTED] On further checks with immigration service it became apparent [REDACTED] student visa had expired, as well as [REDACTED] right to remain the U.K. had expired and was arrested and held at Leeds.

[REDACTED] is now liable for deportation from the U.K.

The upstairs storage area had also been converted to living accommodation, which according to the visiting officers was a fire risk to anyone living above the shop. Checks were carried out with the local authority and no one had the right to live above the shop.

Home office statements to employing illegal workers

Illegal working often results in abusive and exploitative behaviour, tax evasion, undercutting legitimate business and adverse impacts on the employment of lawful workers. Home Office immigration enforcement officers frequently identify illegal migrants in premises involved in the sale of alcohol and late night refreshment. Government intervention is required to amend the licensing legislation to ensure illegal migrants cannot obtain alcohol and late night refreshment.

The Home office have an easy to use web page where employers can check their employee's employment status on line, so there is no excuse for employing illegal persons.

Just to clarify; from an illegal working perspective even an employee was not receiving some sort of remuneration (whether that is monetary i.e wages or payment in kind i.e board and lodging/food etc.) the fact that he is performing work that would otherwise be done by a salaried employee means the business is liable for a Civil Penalty for employing an illegal worker.

West Yorkshire police feel that this restaurant is impacting on UK immigration law as illegal member of staff were found to be working.

The Home office states that there is no excuse for employing illegal persons, and in all cases linked to licence premises revocation should be seriously considered. Therefore West Yorkshire police request the panel consider revocation as the best method of getting the message across that such actions will not be tolerated in Kirklees.

RESTRICTED

Have you made an application for review relating to this premises before? NO

If 'YES', please state the date of that application:

If you have made representations before relating to this premises, please state what they were and when you made them:

[Empty box for representations]


Please 'check' appropriate box(es)

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements, my application will be rejected

It is an offence, liable on conviction to a fine up to Level 5 on the standard scale, under Section 158 of the Licensing Act 2003, to make a false statement in, or in connection with this application

Part 3 – Signatures (please read Guidance note 3)

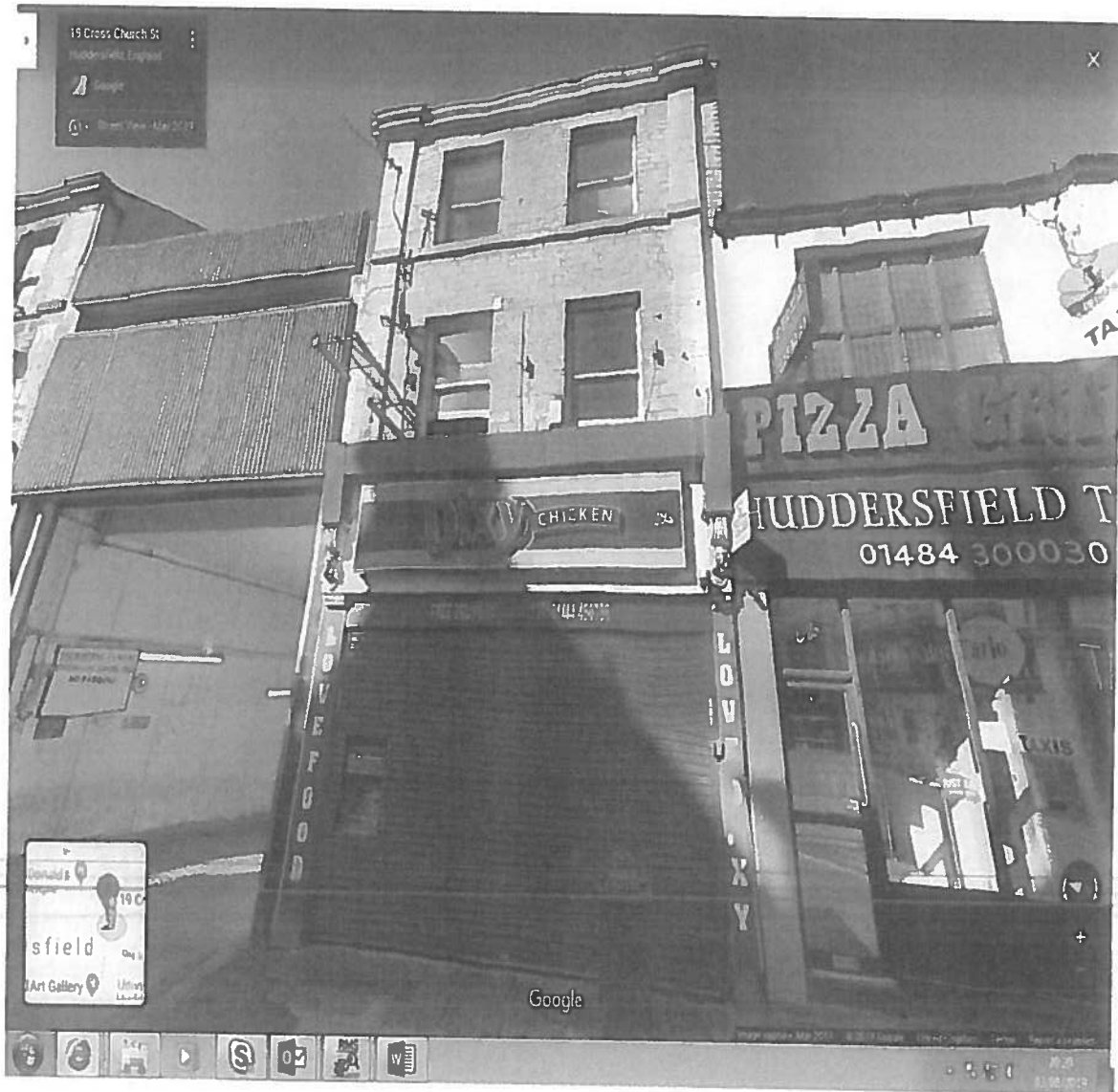
Signature of applicant or applicant's solicitor or other duly authorised agent (see guidance note 4). If signing on behalf of the applicant, please state in what capacity:

Signature:  Date:
Capacity: 20th Aug 19 - Police licensing officer

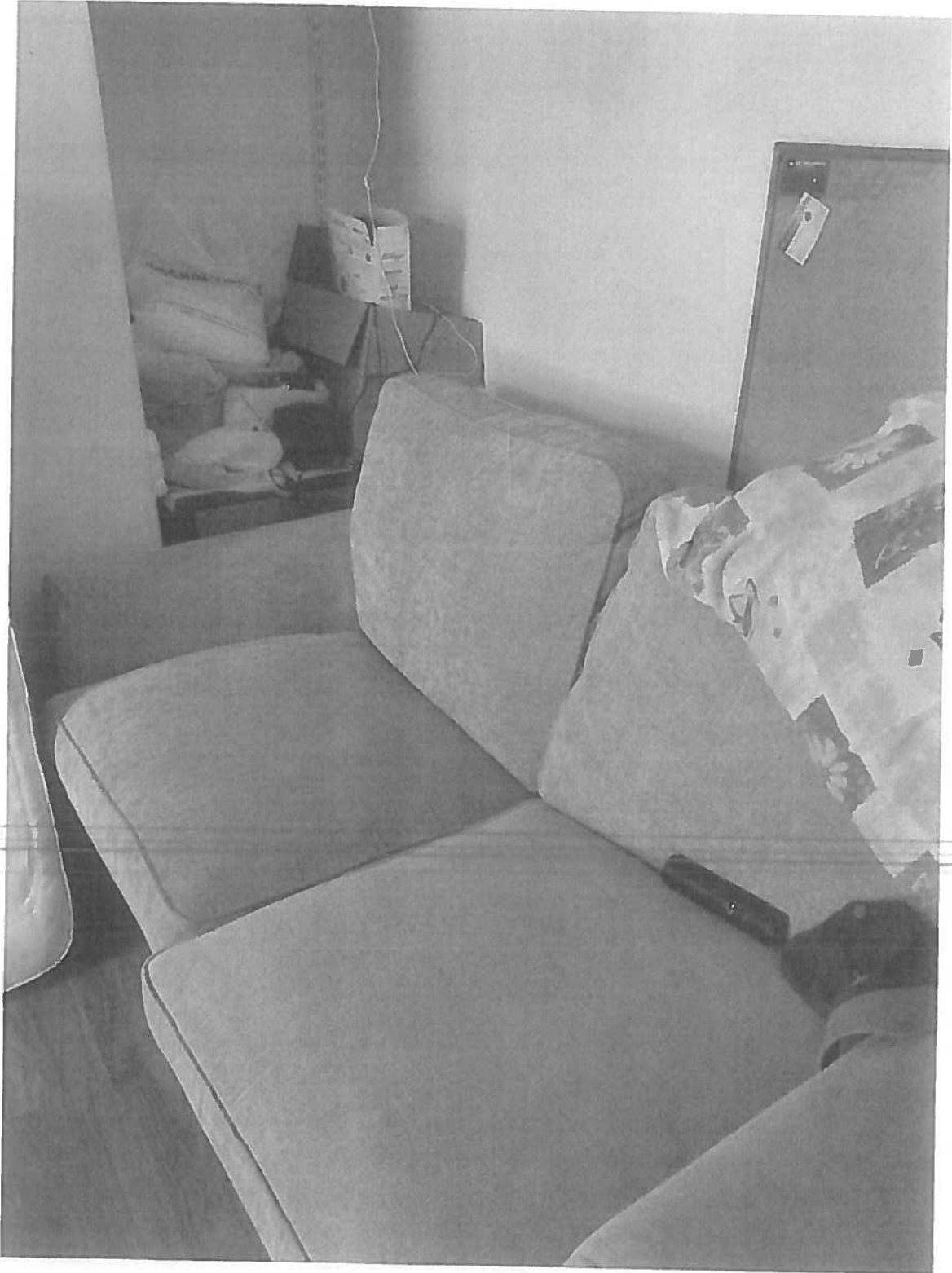
Contact name (where not previously given) and postal address for correspondence associated with this application (please read Guidance note 5):

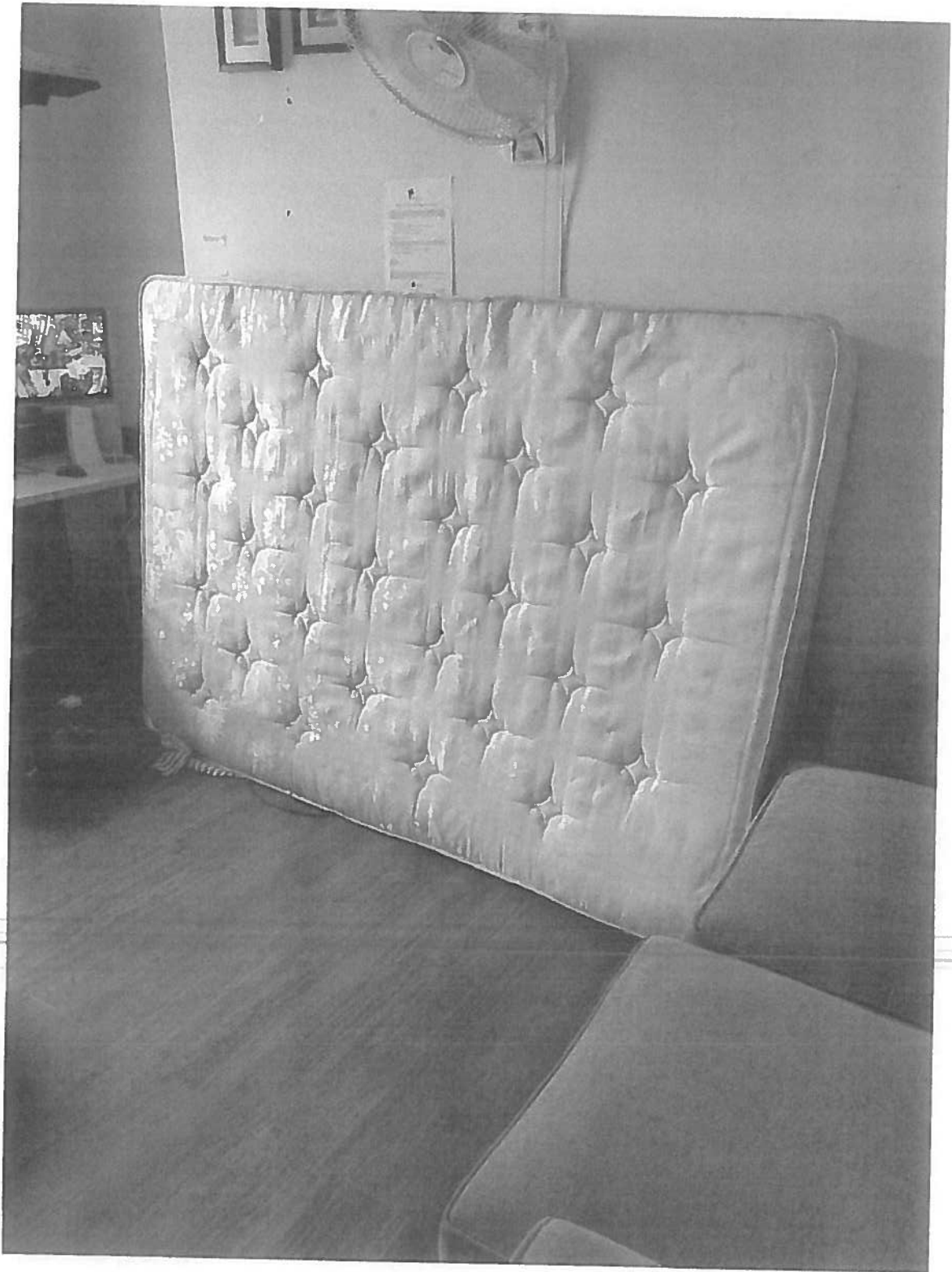
Surname: _____ Forename(s): _____
Address: _____
Town/City: _____ Postcode: _____
Telephone number (if any): _____
If you would prefer us to correspond with you using an e-mail address, please state your e-mail address (optional): _____

PREMISE TWO
19 CROSS CHURCH STREET



19 CROSS CHURCH STREET HUDDERSFIELD (DIXIE CHICKEN)





Appendix B

PREMISES LICENCE

Licensing Act 2003

PR(N)0110**THIS LICENCE IS ISSUED BY**LICENSING
Flint Street Depot
Flint Street
Fartown
Huddersfield
HD1 6LGTel: 01484 456868
Email: licensing@kirklees.gov.uk**POSTAL ADDRESS OF PREMISES****Dixy Chicken**
Dixy Chicken
19 Cross Church Street
Huddersfield
HD1 2PY**LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE**

Late Night Refreshment

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES**Late Night Refreshment** (Indoors)

| Day(s) | From - To |
|------------------|-------------------------------------|
| Monday to Sunday | 23:00 - 05:00 The Following Morning |

THE OPENING HOURS OF THE PREMISES

| DAY(S) | FROM | TO |
|------------------|-------|-------|
| Monday to Sunday | 11:00 | 05:15 |

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND/OR OFF SUPPLIES**NAME (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF THE PREMISES LICENCE HOLDER**

Email address [REDACTED]

Mobile Number 0 [REDACTED]

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

[REDACTED]

NAME, ADDRESS OF THE DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OR PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR (WHERE THE PREMISES AUTHORISES THE SUPPLY OF ALCOHOL)

PERSONAL LICENCE NUMBER:
LICENSING AUTHORITY:

ANNEXES**ANNEX 1 – MANDATORY CONDITIONS****ANNEX 2 – CONDITIONS CONSISTANT WITH THE OPERATING SCHEDULE****ANNEX 2 - CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE**

1. The premise uses CCTV systems both within and outside the premises, installed and operated under West Yorkshire Police Guidelines.
2. The premises benefit from being protected by a burglar alarm and shutters.
2. Management to report/liaise with West Yorkshire Police any relevant crime and disorder or any anti-social behaviour at the premises. Management to ensure any incident that occur at the premises to be recorded in the incident register.
3. Management to ensure there are first aid trained staff with suitable equipment to provide first aid on the premises.
4. The Management uses a nominated taxi company/s to collect customers from the premises with instructions to vehicle drivers not to sound horns.
5. Clear and conspicuous notices shall be displayed at all entrances, exits and in outdoor areas requesting patrons to respect the needs of the local residents and to leave the premises and area quietly. All staff be trained in ensuring the quiet dispersal of patrons.
6. All odours and fumes produced from the cooking of foodstuffs shall be extracted from the premises via an air extraction system. This system shall be insured to the satisfaction of the Responsible Authority for Public Nuisance.
The extraction system shall be maintained and cleansed to ensure to its effective operation. No alterations shall be made to the extract system without the approval of the Responsible Authority.
7. The external refuse and waste bottle receptacles and surrounding storage areas shall be inspected daily, cleansed where necessary and cleansed on at least a weekly basis.
8. To prevent disturbance Management will only allow paying customers to wait whilst hot food is being prepared thus discouraging persons congregating or queuing outside the premises.
9. All litter emanating from the business to be cleared away from areas surrounding the premises on a daily basis
10. Where appropriate Management to refuse admission to persons who are drunk and/or disorderly.
11. Background music to be played at a level which does not cause disturbance to neighbouring residents.
12. Management to put in place measures to discourage the handling and distribution of stolen, counterfeit or other illegal goods.

ANNEX 3 – CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY**ANNEX 4 – PLANS OF PREMISE**

As outlined in the operating schedule and attached plan

Date Granted: 21 November 2005

Date Commences/Varied: 24 November 2005

A handwritten signature in black ink, appearing to read "J. Blawie". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Head of Public Protection Service

PREMISES LICENCE SUMMARY

Licensing Act 2003

PR(N)0110

THIS LICENCE IS ISSUED BY



LICENSING
Flint Street Depot
Flint Street
Fartown
Huddersfield
HD1 6LG

Tel: 01484 456868
Email: licensing@kirklees.gov.uk

POSTAL ADDRESS OF PREMISES

Dixy Chicken
Dixy Chicken
19 Cross Church Street
Huddersfield
HD1 2PY

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

Late Night Refreshment

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Late Night Refreshment (Indoors)

| Day(s) | From - To |
|------------------|-------------------------------------|
| Monday to Sunday | 23:00 - 05:00 The Following Morning |

THE OPENING HOURS OF THE PREMISES

| DAY(S) | FROM | TO |
|------------------|-------|-------|
| Monday to Sunday | 11:00 | 05:15 |

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND/OR OFF SUPPLIES

NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

| |
|---|
| ██████████ |
| NAME OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL |
| |
| STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED |
| As per Licensing Act 2003 |

Any conditions applicable to these premises are attached to the licence

Date Granted: 21 November 2005

Date Commences/Varied: 24 November 2005



Head of Public Protection Service

Appendix C

Relevant Sections of Secretary of State Guidance – Under Section 182 of Licensing Act 2003

Crime and disorder

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.4 The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular

premises, poor management competency could give rise to issues of crime and disorder and public safety.

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.