



FYLDE BOROUGH COUNCIL

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 SINON NEWELL apply for the review of a
(Insert name of applicant)
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 (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or club premises, or if none, ordnance survey map reference or description <u>BARRIQUE</u> <u>2 & 3 MARKET SQUARE</u>	
Post town <u>LYTHAM</u>	Post code (if known) <u>F48 5LW</u>

Name of premises licence holder or club holding club premises certificate (if known) <u>LYTHAM WINE COMPANY LIMITED</u>
--

Number of premises licence or club premises certificate (if known) <u>F4 PL0378</u>
--

Part 2 - Applicant details

I am

Please tick ✓ yes

- 1) an interested party (please complete (A) or (B) below) ☒
- a) a person living in the vicinity of the premises ☐
- b) a body representing persons living in the vicinity of the premises ☐
- c) a person involved in business in the vicinity of the premises ☐
- d) a body representing persons involved in business in the vicinity of the premises ☐

2) a responsible authority (please complete (C) below) ☐

3) a member of the club to which this application relates
(please complete (A) below) ☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Mr ☒ Mrs ☐ Miss ☐ Ms ☐ Other title (for example, Rev) ☐

Surname
NEWELL

First names
SIMON PETER

Please tick ☒ yes

I am 18 years old or over



Current address

10 HASTINGS PLACE

Post Town

LYTHAM

Postcode

F48 5LZ

Da

E-i
(or)

(B

↑

E-mail (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address	
FYLDE COUNCIL TOWN HALL LYTHAM ST ANNES FY8 1LW	
Telephone number (if any)	01253 658658
E-mail (optional)	

This application to review relates to the following licensing objective(s)

Please tick one or more boxes Y

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

Please state the ground(s) for review (please read guidance note1)

PLEASE SEE ANNEXED SHEETS PAGES 1-6.

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

PLEASE SEE ANNEXED SHEET PAGES 1-6.

Have you made an application for review relating to this premises before Please tick ☒ yes

If yes please state the date of that application

Day	Month	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

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

N/A

Please tick ✓ yes

- 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 (please read guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature Simon P. Neale
Date 24.5.17
Capacity INTERESTED PARTY

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 5)	
<u>As page 2.</u>	
Post town	Post code
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Application for review of a premises licence or club premise certificate

under the Licensing Act 2003

Premises Licence Holder: *Lytham Wine Company Limited*

Premises: *Barrique, 2 & 3 Market Square, Lytham, FY8 5LW*

Premises Licence Number: *FY PL0378*

GROUND'S FOR REVIEW

1. **Lytham Wine Company Limited (hereinafter "the Company") have failed to comply with conditions imposed by Fylde Borough Council when granting change of use, planning permission and listed building consent for the premises on 29 June 2016.**

A) Condition 3

"...the external forecourt area at the front of the premises shall only be used for the consumption of food and drink between the hours of 9am and 9pm on any day, with the internal area only open for customers between the hours of 8am and 11pm."

"In the interests of preserving the amenity of occupiers of neighbouring and nearby residential properties as required by Policy EP27 of the Fylde Borough Local Plan."

Particulars of Breach

- (a) From July 2016 to November 2016 on almost all weekends (Fridays and Saturdays) the external forecourt was used for the consumption of drink after 9pm.
- (b) From 2 November 2016, when the Company installed their "Heated Terrace" to today's date, every weekend (Fridays and Saturdays) drink has been consumed on the external forecourt after 9pm.
- (c) On other days during the week and regularly on Sundays since July 2016 to today's date drink has been consumed on the external forecourt after 9pm.
- (d) Directors of the Company have entertained guests on the external forecourt where drink has been consumed after 9pm.
- (e) Evidence in respect of the above will be provided in sworn affidavits with exhibited documents and photographs.

- (f) The Planning Authority have been informed of the aforesaid breaches and asked to conduct their own investigation. They will be able to give evidence as to their findings.

B) Condition 4

"...the ground floor doors and any opening windows shall remain closed closed between the hours of 21.00 hours and 7.00 hours on each and every day of the week except when in use to enter/exit the premises.

"Reason to limit the opportunities for noise to escape from the building and so to safeguard the amenities of neighbouring residential properties"

Particulars of Breach

- (a) On divers days during the period July 2016 to today's date, the external full length windows of the premises are opened after 21.00 hours to compliment the outside usage of the external forecourt and particularly when there are favourable weather conditions.
- (b) Since Easter 2017 (Thursday 13 April 2017), the windows and doors have been opened after 21.00 hours every Friday and Saturday, on some occasions on a Sunday and other weekday nights.

C) Condition 5

"That within one month of the date of this permission a scheme for the management of the refuse associated with the operation of the premises hereby approved shall be submitted to the local planning authority for its approval. The scheme shall include details of the siting, size, design and materials of every storage area that is proposed. The approved scheme shall be implemented within one month of its approval and then shall maintained and operated in full accordance with the approval scheme at all times thereafter."

Particulars of Breach

- (a) The Company have failed to submit a scheme for the management of refuse and thus, failed to have such a scheme approved and implemented.
- (b) The Company have sited a large industrial waste bin (a Eurobin) at the side of the premises in a conservation area. It is unsightly, inappropriate and inadequately screened. It is often overflowing with waste and is unhygienic and a health hazard. Photographic evidence is available. This is a persistent and regular occurrence. Further the Company cause the waste bin to be emptied between 6am and 7:30am on approximately 3 mornings each week. The Waste Management wagon parks immediately outside neighbouring properties with its engine running; the planters are dragged to the side; the beers kegs and gas cylinders are moved and the bin is

wheeled to the wagon. It is hydraulically hoisted and tipped, the empty bottled crashing into the bin.

- (c) The Company store metal beer casks at the side of the premises.
 - (d) Since November 2016 and to today's date, the Company store both full and empty liquid/calor gas cylinders at the side of the property – between 2 and 5 in number. These are stored in a manner which does not comply with Health and Safety Executive regulations, British Compressed Gas Association guidelines and Calor Gas protocols. The Planning Authority have been informed of such matters and requested that they seek guidance from the HSE and Fire Authorities. Their reports/advices will be annexed to this application when available. The storage of such dangerous and inflammable material, adjacent to the building, adjacent to waste storage and immediately adjacent (1 metre) from a public footpath and highway constitutes a serious hazard and health and safety risk.
- D) The Planning permission granted was on the basis of the plans submitted to the Local Authority and listed as LWC/001, 010, 110, 310, 311, MH/01-05

Particulars of Breach

- (a) On a date unknown but in or about late summer/early autumn 2016 the Company fixed speakers to the exterior walls of the premises so that they can (and do) broadcast music to the exterior forecourt area and beyond.
 - (b) The fixing of these speakers was not included in any submitted plan
 - (c) The broadcasting of such music is a nuisance, annoyance and interference with the amenity of the neighbouring residential properties and would have to have been considered by the Planning Authority had they known of such a proposal.
 - (d) The Company continue to broadcast music to the outside of the premises after 9pm and it does not cease until the premises close down after 11pm.
- 2) **The Company has failed to comply with the Premises Licence which was obtained for Barrique at the beginning of 2016 ref FY PL0378:-**

Particulars of Breach

- a) The application for the licence contained the following description of the premises under PART 3- OPERATING SCHEDULE

"The application is for a wine/deli retail shop with café and bar element. We are aiming to cater for the fine wine and deli market both on and off sales but we will be serving coffee, alcohol, cured meats, cheese and other deli items in a café/bar environment holding regular wine tastings and pairing evenings"
- b) The Company did not apply for the provision of regulated entertainment, namely "live music" and "recorded music". The Company did not complete Box E and Box F of the licence application.
- c) The licence was accordingly granted

- d) The Company have played recorded music within the premises and outside the premises (as aforesaid) since July 2016.
- e) Since at least October 2016 the Company have organised "Open Mic" nights on a Wednesday evening. This form of karaoke is:-
 - (i) a nuisance and annoyance;
 - (ii) wholly inconsistent with the Operating Schedule;
 - (iii) in breach of the Premises Licence granted which gave no permission for such regulated entertainment.
- (f) Since at least the early part of 2017 have organised live music performances with groups/bands playing amplified music both within and outside the premises on Sunday afternoons between 4pm and 7pm. This music, played with the doors and windows open, can be heard 50 – 100 yards from the premises. On Sunday 30 April 2017, this led to drunken patrons of the premises singing and dancing in the external forecourt who, when observing concerned neighbours in their gardens, began shouting abuse at those neighbours. No attempt was made by the Company to stop the music or deal with the unruly and aggressive patrons. These actions:-
 - (i) cause nuisance and annoyance;
 - (ii) are wholly inconsistent with the Operating Schedule;
 - (iii) are in breach of the Premises Licence which gave no permission for such regulated entertainment;
 - (iv) are, as above, likely to cause crime and public disorder.
- 3) The Company has misled the Licensing Authority in its application to vary the Premises Licence made on 15 March 2017:-**

Particulars of Breach

- (a) The Company, in applying to extend the opening hours of the premises, failed to inform the Licensing Authority of the Planning Conditions which override and supersede any extension of hours granted by the Licensing Authority.
- (b) The Company failed to comply with its statutory duty pursuant to Section 17 of the Act and Section 25 of the Licensing Act 2003 (Premises Licences and Club premises certificates) Regulations 2005.
- (c) No notice of the required size, printing, location and visibility from the outside of the premises was advertised.
- 4) The Company and its Directors are not fit and proper people to hold a premises licence for 2 & 3 Market Square, Lytham and the Premises Licence should be revoked on the following grounds (in approximate chronological order):-**
- (a) They misrepresented the nature and type of the premises to the Licensing Authority and Planning Authority and the general public.

- (b) They stated in the plans annexed by Firths Architects "*Conversion of Butchers into Delicatessen*". There is no delicatessen provision within the premises. There are, solely, one or two cooked meats or cheeses and bread for sale to eat within the premises. Test purchasers in recent months will serve affidavits to this effect. Most recently they were told "*This is an 'eat in' deli*".
- (c) They failed to apply for live music and recorded music regulated entertainment licences and then provided and continued to provide such entertainment.
- (d) They failed to inform the Licensing Authority and Planning Authority of the nature and extent of any external use of the forecourt area.
- (e) They misled the Planning officers into thinking that such external use of the forecourt area would be constrained by the weather and such was the planning officers' views as expressed by the Planning Authority at the meeting on 29 June 2016 (see pages 25 to 33 of the minutes of the meeting of the Authority). This was despite the fact that by email dated 5 May 2016, the planning officer was warned of the intentions of the Company to create the "Heated Terrace" which they did 3 months after retrospective planning permission was granted.
- (f) They failed to obtain Planning Permission and Change of Use permission before they opened to premises thus depriving "interested parties" the opportunity to make representations prior to the premises opening. Further, the interested parties were misled due to the misrepresentations made by the Company as to the type, nature and extent of their commercial operation (see aforesaid).
- (g) The Company were advised not to commence the building works on 3 occasions in 2016 - 18 February, 29 February and 3 March 2016. They continued to carry out the building works and ignored such advices from the Planning Officer.
- (h) The Company were in breach of Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This is a criminal offence with a sentence of up to two years imprisonment and an unlimited fine.
- (i) The Company have failed to act in accordance with the Planning Conditions attached to the consent given on 29 June 2016 (see aforesaid).
- (j) The Company's true and real intentions with regard to Barrique are now manifest. Their actions over the last 18 months have amounted to misrepresentation and creeping attrition to obtain their ultimate goal: a bar in a residential area of Lytham with a substantial outside provision of licensed activities; the broadcasting publicly of recorded music; the broadcasting of loud amplified music and the provision of late night drinking until 12.00 at weekends and Bank Holidays and Lytham Festival and all of December (no doubt to cater for office parties). This was predicted in an email of objection dated 5 May 2016. The motives and methods of the Company were identified and explained. They were disregarded at the Planning Meeting of June 2016.

5. **The Company has manipulated the licensing and planning procedures and regulations. They have broken the criminal law; they have failed to comply with planning conditions.**
6. **The Company's actions are such that they are unable to meet the Licensing Objectives:-**
 - (a) The prevention of crime and disorder – the failure to comply with planning and licensing conditions and any failure to enforce them properly is likely to lead to public disorder, criminal damage, assault. See the recent incident at the Clifton Arms Hotel regarding the unauthorised fireworks display.
 - (b) Public safety – the storage of waste and gas cylinders
 - (c) Public nuisance –see aforesaid.

In the circumstances, the Company is not fit and proper to hold a premises licence and it should be revoked pursuant to statute.

Julian P Nevell
24.5.17.