

Mr Peter Hessest LLB (hons),  
Clerk to the Licensing Board  
Council Offices  
16 Church Street  
Dumbarton  
G82 1QL

**Dear Sir,**

**Licensing (Scotland) Act 2005, Section 36(1)**

**Premises Licence Review Application**

**Premises:** The Shipyard Bar (previously Lounge on the Clyde)

**Premises Licence Number:** WDLBPREM/0044

**Address:** 1-3 & 6 Chalmers Street Clydebank G81 1RT

**Premises Licence Holder:** K.G. Contracts Limited

**Designated Premises Manager (DPM):** Paul Cummings (WDC1202) (previously Mandy McBain (GC11570))

Previous General Manager: Leith McKenzie (Edinburgh PL)

**Licensed Hours:** Monday to Thursday – 11 am to 12 midnight

Friday and Saturday – 11 am to 1 am the following day

Sunday – 12.30 pm to 12 midnight

On sales capacity – 200 persons

In terms of Section 36(1) of the Licensing (Scotland) Act 2005 the Licensing Standards Officer (LSO) makes application to the Licensing Board for a review of the premises licence held by K.G. Contracts Limited in respect of the premises then known as “Lounge by the Clyde”.

The LSO makes application in terms of Section 36(3)(b) on grounds relevant to one or more of the Licensing Objectives as articulated at Section 4(1) of the 2005 Act, namely;

*Preventing Crime and Disorder*

*Securing Public Safety*

and *Protecting and Improving Public Health*.

In support of this application the following information is provided for the Board’s consideration;

### **Circumstances Leading to the Review request**

This report highlights some factors which have occurred either in relation to the operation of these premises, or as a result of the actions of individual(s) involved in the management of the premises.

### **Recent Premises History**

This premises licence was granted during the period of transition in 2009, and the premises has continued to trade ever since under several different licence holders. The current licence holders have held this licence since 12 April 2019. These premises operate over two floors, with a public bar area on the ground floor and a function suite/restaurant area on the first floor.

These premises have been visited by LSOs on numerous occasions since September 2009. Since the Covid pandemic restrictions commenced in March 2020 the premises have received multiple visits from both LSOs and Environmental Health Officers. The purpose of these visits have been mainly to advise and assess compliance with Covid measures and regulations. Assistance was also been given in establishing a temporary external area under occasional licences to assist in the safe running of the business during the pandemic.

The premises have been largely compliant with all the standard requirements during the pandemic.

### **Chronology of recent events in relation to Hogmanay 2021**

On 1 January 2022 a complaint was received by the Licensing Team in relation to overcrowding and general Covid concerns specifically related to the operation of these premises on the previous evening, 31 December 2021 and into the early hours of 1 January 2022. This complaint was relayed to Police Scotland on 5 January 2022.

On 10 January 2022 both LSOs visited the premises with the primary purpose of viewing the premises CCTV to assess the footage in relation to any possible breaches of the Licensing Objectives. The LSOs also carried out an inspection in relation to covid compliance and general licensing compliance.

The LSOs were met by Leith McKenzie who introduced himself as the General Manager. He stated that he was unable to access the premises CCTV as he had not been advised of the necessary access code by the business owner John Cadona.

He explained that on the evening of 31 December 2021, the premises had experienced an issue concerning overcrowding and explained that this had been due

to e-tickets being sold through Eventbrite. These tickets had been copied and presented by patrons on entry, effectively allowing more than 1 patron entry using duplicated tickets. He stated that he had just become aware of this when Police Officers attended mid to late evening due to a complaint they had received in relation to overcrowding. He stated that the Police requested that the premises cease selling alcohol temporarily until the overcrowding upstairs could be alleviated to some extent by bringing some patrons downstairs. A better level of patron distribution was eventually achieved according to Mr McKenzie and the Police left the premises.

The LSOs asked how many tickets were sold and Mr McKenzie stated that 240 tickets were sold for the event upstairs and 80 downstairs. 320 in total. Mr McKenzie did not seem aware of the premise's capacity which as stated in the Operating Plan accompanying the Premises Licence is 200.

It was noted during this visit that general licensing and physical covid measures remained in place and compliant as on previous visits.

Following this visit, a review of social media sources showed that the Premises had advertised the evening's event as "Zander Nation" which is a dance DJ form of entertainment. The event was advertised as lasting until 1am with the premises remaining open until 3 am. The LSO checked and confirmed that the premises had not been granted an extended hour's permission until 3 am and that the terminal hour on the premises licence for this evening remained as 1am.

On 11 January 2022 the question of the hours traded was put to Mr McKenzie in an email and no response has been received.

On 12 January 2022 the matter of hours traded and the likely over-capacity was passed to Police Scotland with a recommendation that the Public Space CCTV might be evidential in these matters.

On 14 January 2022 the Premises Licence Holders, KG Contracts, were appraised of the situation to date as the business operators are tenants of the premises licence holders.

On 18 January 2022 a further compliance visit was carried out by the LSO and the Environmental Health Covid Compliance Officer. The business operator, John Cadona was present. He confirmed that he was also unable to access the premise's CCTV and that they had been unable to for several months due to the unavailability of the code to access the system.

Mr Cadona stated that he believed that Mr McKenzie had applied for extended hours as that is why he believes that the premises did trade until 3am. He also stated that

Mr McKenzie had messaged him at 4am on 1 January 2022 after he had locked the premises up.

Mr Cadona also confirmed that the General Manager, Leith McKenzie was no longer employed and was now uncontactable. The LSO emphasised that all efforts must be made to prevent any further risk of actions that could breach the Licensing Objectives. This assurance was given by Mr Cadona.

On 21 January 2022 a joint EHO/LSO visit was carried out during evening trading of the premises and this was able to confirm that the premises were trading in a safe manner.

On 24 January 2022 Police Scotland confirmed that they were having technical issues in viewing the public space CCTV.

On 31 January 2022 the Licence Holders, KG Contracts, confirmed that they were ceasing the tenancy of the business operator John Cadona.

On 17 February 2022 the premises ceased to trade as the Lounge by the Clyde.

### **Comment**

Scottish Hospitality Covid guidance was updated on 23 December 2021. The guidance then stated that:-

*“It will also mean that, with the exception of wedding receptions, dancing will not be possible due to the likelihood of households mixing in large numbers.”*

This effectively closed nightclub operations and would prevent dancing in any other venue other than for weddings. Seated service was also required by the guidance. The LSO's opinion is that the decision to continue with a dance DJ booking lead to very predictable problems.

Selling 320 tickets when the capacity of the premises is 200 led also to predictable overcrowding. The maximum Covid capacity should have been significantly reduced from the normal capacity figure of 200. This resulted in there being many more patrons than could be seated. A personal licence holder should be aware of the capacity figure contained within the operating plan attached to the premises licence.

Not checking or confirming that extended hours permissions had been successfully applied for and subsequently granted but operating them is not competent behaviour of a personal licence holder. These extra unlicensed hours further compounded the risks created by the style of entertainment and overcrowding.

Leaving the CCTV system non accessible due to a lack of access code for several months is not competent behaviour of the business operator and the manager in general.

According to Mr Cadona most of the above decisions appear to have been taken unilaterally by the recently employed General Manager, Leith McKenzie.

It is the opinion of the LSO that the decision to operate unlicensed hours and beyond the licensed capacity was a breach of Schedule 3 - Mandatory Condition 2 (1) within the Licensing (Scotland) Act 2005 which states:-

*‘Alcohol to be sold on the premises only in accordance with the operating plan contained in the licence.’*

This would be a breach of the Preventing Crime and Disorder Objective as an offence is committed with such a breach.

It is also the opinion of the LSO that the decisions and factors outlined in this report led to what was a breach of the *Securing Public Safety* and *Protecting and Improving Public Health* Objectives of The Licensing (Scotland) Act 2005, given the circumstances that Covid-19 placed all persons in at that time. This placed all staff and patrons both at the venue and others connected to those present at far greater risk of the dangers of Covid. This was also done at a time when other businesses were facing curtailment of their businesses and closure in some cases.

This is respectfully submitted to the Board for its consideration.

**Lawrence Knighton**

**Licensing Standards Officer**

**Date:** 4 April 2022

**Contact :**

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