

MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE HELD IN THE
COUNCIL CHAMBER, WALLFIELDS,
HERTFORD ON MONDAY 8 NOVEMBER
2021, AT 10.00 AM

PRESENT: Councillor D Snowdon (Chairman)
Councillors J Jones and T Page

ALSO PRESENT:

Councillor Phyllis Ballam

OFFICERS IN ATTENDANCE:

Peter Mannings	- Democratic Services Officer
Katie Mogan	- Democratic Services Manager
Dimple Roopchand	- Litigation and Advisory Lawyer
Dominic Stagg	- Environmental Health
Brad Wheeler	- Senior Licensing and Enforcement Officer

ALSO IN ATTENDANCE

Joab Archer	- Premises Licence Holder
Sally Bannister	- Police Licensing Officer
Alan Green	- Assistant Solicitor

Sergeant Clare	- Hertfordshire
Ramirez	Constabulary
Richard Taylor	- Solicitor

41 APPOINTMENT OF CHAIRMAN

It was moved by Councillor Page and seconded by Councillor Jones, that Councillor Snowdon be appointed Chairman for the Sub-Committee meeting. After being put to the meeting and a vote taken, the motion was declared CARRIED.

RESOLVED – that Councillor Snowdon be appointed Chairman for the Sub-Committee meeting.

42 APOLOGIES

There were no apologies.

43 CHAIRMAN'S ANNOUNCEMENTS

There were no Chairman's Announcements.

44 DECLARATIONS OF INTEREST

There were no declarations on interest.

45 APPLICATION FOR REVIEW OF THE PREMISES LICENCE FOR THE MIXER, 6 BALDOCK STREET, WARE, HERTFORDSHIRE SG12 9DZ

The Chairman summarised the procedure for the Sub-Committee hearing. All those present were introduced

or introduced themselves.

The Senior Licensing and Enforcement Officer said that the applicant had notified the Council that she was unable to attend the hearing. He presented his report covering an application for review of the premises licence under Section 51 of the Licensing Act 2003 for The Mixer, 6 Baldock Street, Ware.

The Chairman explained that the applicant was not available and there had been no acceptable alternative dates. The Sub-Committee agreed to hear the case in the absence of the applicant.

The Sub-Committee was advised that on 20 August 2021, a review application was received from the applicant in the capacity of a neighbouring resident acting as an interested party. The review application alleged that there were issues regarding noise from the premises and that there was noise nuisance had been reported from the outside area which closed at 22:00 hours.

The Senior Licensing and Enforcement Officer said that the applicant was concerned about noise from the premises when there were live bands or DJ sets and it had been alleged that doors and windows were often open allowing noise to escape more easily.

The Sub-Committee was advised that the applicant had requested that the Sub-Committee either close the garden area or bring the forward the closure time for the outside area to earlier than 22:00 hours. A condition had also been requested that all doors and

windows be closed at the same time to prevent noise leakage. The resident had called the review as she believed that this related to the prevention of public nuisance licensing objective.

The Senior Licensing and Enforcement Officer said that further representations were received during the 28 day consultation period; further representations were received from Environmental Health, Hertfordshire Constabulary, a District Councillor, a Town Councillor and four from local residents or local businesses.

The Sub-Committee was advised that the representation from Environmental Health confirmed that Officers had received numerous complaints over the years and noise equipment had been installed in the applicant's home in November 2019.

The Senior Licensing and Enforcement Officer said that Environmental Health had made unannounced visits and Officers had not established the existence of statutory noise nuisance as defined by the Environmental Protection Act 1990.

The Sub-Committee was advised that the representation from the police gave a brief history of the premises and informed the Sub-Committee on a number of police reports. The police had stated that they had received 11 reports between 5 October 2019 and 25 June 2021, in relation to noise. The police had liaised with the applicant and conditions had been suggested to the Sub-Committee, as detailed in paragraphs 1.12 and 1.14 of their report.

The Senior Licensing and Enforcement Officer said that the police had stated that they believed that there was evidence that music played from the premises was loud and impacted upon residents and the police believed that the use of the archway was causing a nuisance. The Town and District Councillors had both stated that they had received complaints from residents alleging noise.

The Senior Licensing and Enforcement Officer summarised a number of other comments that been received from residents in respect of noise. The premises licence holder had responded to these documents and his responses had been shared with all those present at the hearing today.

The Sub-Committee was advised that the report looked at the East Herts Statement of Licensing Policy and the revised guidance under Section 182 of the Licensing Act 2003. The report included information provided by the applicant, the interested parties and the premises licence holder.

The Senior Licensing and Enforcement Officer said that the Sub-Committee should determine the application with a view to promoting the four licensing objectives. Members must consider the evidence that had been produced and they should take no action if they believed that the premises would not undermine the licensing objectives.

The Sub-Committee was reminded that the guidance said that Members should take the minimum steps that were needed to mitigate their concerns. Members

were advised that they could make changes to the premises licence, so long as these were appropriate and proportionate for the promotion of the Licensing Objectives.

The Senior Licensing and Enforcement Officer detailed the options available to the Sub-Committee and said that the decision should be evidence based and justified as appropriate for the promotion of the four licensing objectives and proportionate to what the Sub-Committee intended to achieve.

Mr Taylor, solicitor for the premises licence holder (PLH), referred to paragraph 3.23 of the report and the applicant's evidence in the form of noise recordings. He asked a question as to the value of the noise recordings as evidence and the Senior Licensing and Enforcement Officer confirmed that the evidence of the applicant's noise recordings was of limited value.

Mr Taylor sought and was given confirmation from the Officer that a lot of the noise reports had come at a time when the doors and windows of the premises were open due to COVID-19. He also asked and was given an assurance from the Officer that no complaints had been received in respect of noise since the application had been submitted.

Mr Dom Stagg, Senior Technical Officer for East Herts Environmental Health, confirmed that numerous complaints had been received over a number of years. He confirmed that the complaints had not met the threshold to be classified as a statutory noise nuisance under the Environmental Health Protection Act.

Members were advised of the high benchmark that was in place for a statutory nuisance in that noise had to have a significant impact on the enjoyment of a neighbouring property before it could be classified as a statutory nuisance.

Councillor Page asked for the Senior Technical Officer to expand on the activities of Environmental Health in respect of noise monitoring. He referred in particular to the recently declined offer of assistance from the applicant. The Senior Technical Officer explained that the applicant had declined a recent offer of assistance and he set out the reasons for this and the advice that had been subsequently given by Officers.

Councillor Jones asked if any further suggestion had made for noise monitoring equipment to be installed in other premises where there had been complaints. The Senior Technical Officer explained the process that was followed before noise monitoring equipment could be offered and deployed.

Mr Taylor sought and was given clarification from the Senior Technical Officer that Environmental Health had insufficient evidence to apply for a review of this premises licence. The Senior Technical Officer said that Environmental Health Officers would continue to work with the premises licence holder and were supportive of the conditions that had been suggested.

The Senior Technical Officer said that he welcomed the offer of a condition in respect of a noise limiter. He explained that things had not yet reached the stage where a problem had been identified at The Mixer

whereby something needed to be done in terms of noise and a statutory nuisance.

Mr Taylor said that the premises licence holder believed considered that noise limiters were very expensive and that this was not being offered as a condition. He invited the Sub-Committee to impose the conditions that had been offered and to instruct the premises licence holder to continue to work with Environmental Health. He commented on the way forward if a noise limiter was deemed to be required at The Mixer.

Sergeant Clare Ramirez asked and was given an answer as to what had been recorded in December 2019. The Sub-Committee was advised that people noise had been audible as well as some music evident in the recordings. Members were advised that part of the assessment of acceptability was the ability to control noise and people noise was harder to control.

Mr Taylor asked and was given clarification as to when the CCTV evidence had been submitted to the Premises Licence Holder. The Sub-Committee resolved to move into part 2 with the press and public being excluded to allow police video footage to be viewed by Members.

Following this, the hearing continued in public and there was a five minute adjournment for the premises licence holder and Mr Taylor to discuss the video footage.

The meeting restarted following the adjournment and

Sergeant Ramirez clarified that there had been some noise observed by the police prior to 8 pm. She also pointed out that noise had been logged on diary sheets by the applicant at a time prior to 8 pm. The Sub-Committee were advised of the matter of smoking in the archway where people had congregated in an enclosed space that should not be used.

Sergeant Ramirez said that the main concern of the police was that the premises licence holder needed to take responsibility for the outside areas and introduce actions to control areas being used as an extension of the premises. She referred to conditions that had been requested in relation to the alleyway.

Sergeant Ramirez commented on the loud music and referred to the premises being more than a restaurant or place to socialise. She said that the police believed more could be done to mitigate the issues that they had identified. The Sub-Committee was referred to the pool of model conditions in the Licensing Policy. Sergeant Ramirez drew Members attention to photos from Facebook which showed a DJ near a doorway with speakers facing the garden.

Councillor Snowdon questioned the police as to whether they had considered launching their own review application for this premises. Sergeant Ramirez said that she believed there was sufficient evidence for a review and the police felt that this review application had come at the right time. She confirmed that the police were seeking conditions to be applied to the licence as detailed in paragraph 1.12 on page 72 of the public document pack.

Sergeant Ramirez said that care needed to be taken in respect of the use of the courtyard and the police felt that the numbers permitted to use this very small area needed to be defined. She also referred to the care that the premises licence holder needed to exercise in terms of where the smoking area was going to be and the need for some control over this area.

Sergeant Ramirez said the alleyway should be controlled on the basis that from 8 pm there should be no customers congregating in the alleyway to the side of the premises unless they were queuing to gain access. Mr Taylor set out the context for the 16 calls made to police during a period when COVID-19 had dictated that doors and windows had to be open for premises to be allowed to open.

Councillor Ballam, as the local ward Member for Ware Town Council, addressed the Committee at length in respect of the review application. She highlighted an instance of very loud music emanating from The Mixer on a Sunday and all the doors and windows had been open. She stated that the matter of noise had been an issue for as long as the premises had been open prior to doors and windows being opened for ventilation. She referred to the demeanour of the premises licence holder and said that was evidence of disturbance from this premises adversely impacting on the health of residents.

Mr Taylor referred to the proactive approach being taken by the premises licence holder in his dealings with the responsible authorities. He referred to the

limitations of what could be achieved with a grade 2 listed building in terms of noise mitigation. He referred to the complaints being largely from a single person in respect of noise from the premises.

Mr Taylor referred to the complaints as being about noise from the premises and from customers. He addressed the Committee at length in respect to of noise and made the point that there had been no noise complaints from the applicant for four months. He said the premises licence holder had worked with Environmental Health in respect of noise and he had also been working with a noise specialist in regarding the installation of a noise limiter.

Mr Taylor explained that there was one area of outside space which could accommodate 20 people. He stated that curtailing the hours for this space could be catastrophic for the business. He addressed the Sub-Committee in respect to the use of the archway and said that the premises licence holder could not accept further restrictions of the use of the courtyard as well as a new separate smoking area that had been introduced.

Mr Taylor said that a condition would be acceptable to the premises licence holder for no outside speakers to be used and a further condition would be accepted for all doors and windows to be closed when music was being played above background levels.

Councillor Jones asked if the complaints had stopped due to any particular action taken by the premises licence holder. The premises licence holder explained

that air circulation fans had been installed to ensure a good air flow now that the doors were shut and windows locked. He said he always did what he could to rectify matters when he was notified of a complaint.

Councillor Jones asked whether the archway was a public right of way. The premises licence holder explained that there was no legal public thoroughfare but the archway was used as a cut through by the public and residents.

The premises licence holder answered a number of further questions from the Sub-Committee in respect of the outside area, the DJ music being played with windows open and the importance of the outside space to the business.

Councillor Page asked a question in respect of the training that had been given to the staff in respect of people management. The premises licence holder explained that although he had no formal people management training, he had received guidance from police and Environmental Health and there were SIA approved door staff on Fridays and Saturdays.

The Sub-Committee asked a number of the questions of the premises licence holder and Mr Taylor in respect of the clientele and music being played at The Mixer as well as further questions about the licensable area and possible conditions.

Sergeant Ramirez explained that the police felt that the restrictions on the licence governing the outside area and the alleyway should not just apply on Fridays and

Saturdays as there could be events on public holidays and on other days during the week. She also explained that the police would like to see a condition that prevented the use of the covered section of the alleyway.

At the conclusion of the closing summary submissions, the Sub-Committee, the Litigation and Advisory Lawyer and Democratic Services Officer retired to a separate room to allow Members to consider the evidence.

Following this, Members and Officers returned and the Chairman announced that the Sub-Committee had read the application for review and listened to the comments of the Senior Licensing and Enforcement Officer, the Responsible Authorities and Interested party. The applicant was absent from the hearing today and the Sub-Committee had proceeded to hear the review in the absence of the Applicant.

In determining this matter, the Sub-Committee had decided to modify the conditions of the premises licence and include new conditions, the majority of which have been offered up by the Premises Licence Holder in consultation with the police:

Conditions

- There will be no use of outside speakers at the rear courtyard of the premises.
- All doors and windows to be closed after 22:00 hours when music is being played inside the premises, except for ingress and egress.

- From 16:00 hours, no customer pedestrian access from the premises to the car park at the rear of the premises, unless during an emergency situation.
- Between 22:00 hours and 09:00 hours, there shall be no disposal of bottles, or other refuse, or deliveries or collecting, relating to licensable activities at the premises, except the weekly refuse collection. Deliveries to be made to the front of the premises only.
- A written dispersal policy, approved by a Police Licensing Officer, will be in place and a copy available for inspection at the premises. As a minimum, the policy must cover actions to be taken to reduce the impact on the local community when customers are leaving the premises. The policy must be operated and adhered to by the staff at the premises.
- In addition to the dispersal policy, the Premise Licence holder will ensure that a soft closure procedure is followed at the end of the evening, 30 minutes before the time the premises are due to close. This must include lowering any music, informing people of the approaching closing time, not selling excessive amounts of drinks to people within this time period, encourage sensible drinking and ensuring people have time to finish the drinks they have ordered prior to closure.
- The Premises Licence Holder shall actively participate in the PubWatch Scheme, including

attending the meetings, and supporting the PubWatch banning systems including keeping records and sharing information with the police.

- A minimum of one SIA registered door staff to be present on duty on Friday and Saturday evenings between 7pm to the close of premises.
- At all times after 21:30, the area hatched blue on the attached plan is to be used as a smoking area only. In that area:
 - i) A maximum of 10 persons to be permitted at any time;
 - ii) No tables and chairs will be available for use;
 - iii) No drinks to be permitted;
 - iv) Notices will be displayed requesting that customers use the area quietly to ensure no nuisance is caused to the neighbours;
 - v) The passageway /courtyard area that will be hatched green on the attached plan is to be kept clear of obstruction except when queuing for entry to the premises;
 - vi) No alcohol or smoking to be permitted by patrons in the passageway/courtyard area hatched green on the attached plan.

Annex 2 conditions:

- Amend condition one to include the door supervisor to be SIA registered
- Remove condition 7
- Replace condition 11 to read 'No use of the rear courtyard after 21:30'
- Licence 17/0170/PLMV to correct the timing for Recorded Music to Monday – Saturday 10:00 to 00:30.

In coming to its decision, the Sub-Committee had been mindful to strike a healthy balance between residents' interests and supporting the night-time economy. Members were satisfied that the offered conditions and additional conditions granted were appropriate to promote the licensing objectives and would address many of the representations received.

RESOLVED – that the conditions of the premises licenced be modified to include new conditions, the majority of which have been offered up by the PLH in consultation with the police:

Conditions

- There will be no use of outside speakers at the rear courtyard of the premises.
- All doors and windows to be closed after 22:00 hours when music is being played inside the premises, except for ingress and egress.
- From 16:00 hours, no customer pedestrian

access from the premises to the car park at the rear of the premises, unless during an emergency situation.

- Between 22:00 hours and 09:00 hours, there shall be no disposal of bottles, or other refuse, or deliveries or collecting, relating to licensable activities at the premises, except the weekly refuse collection. Deliveries to be made to the front of the premises only.
- A written dispersal policy, approved by a Police Licensing Officer, will be in place and a copy available for inspection at the premises. As a minimum, the policy must cover actions to be taken to reduce the impact on the local community when customers are leaving the premises. The policy must be operated and adhered to by the staff at the premises.
- In addition to the dispersal policy, the Premise Licence holder will ensure that a soft closure procedure is followed at the end of the evening, 30 minutes before the time the premises are due to close. This must include lowering any music, informing people of the approaching closing time, not selling excessive amounts of drinks to people within this time period, encourage sensible drinking and ensuring people have time to finish the drinks they have ordered prior to closure.
- The Licence Holder shall actively participate in the PubWatch Scheme, including attending the

meetings, and supporting the PubWatch banning systems including keeping records and sharing information with the police.

- A minimum of one SIA registered door staff to be present on duty on Friday and Saturday evenings between 7pm to the close of premises.
- At all times after 21:30, the area shaded blue on the attached plan is to be used as a smoking area only. In that area:
 - i) A maximum of 10 persons to be permitted at any time;
 - ii) No tables and chairs will be available for use;
 - iii) No drinks to be permitted;
 - iv) Notices will be displayed requesting that customers use the area quietly to ensure no nuisance is caused to the neighbours;
 - v) The passageway /courtyard area shaded green on the attached plan is to be kept clear of obstruction except when queuing for entry to the premises. In that area:
 - No alcohol consumption or smoking to be permitted by patrons

Annex 2 conditions:

- Amend condition one to include the door supervisor to be SIA registered.
- Remove condition 7
- Replace condition 11 to read 'No use of the rear courtyard after 21:30'

Current Licence 17/0170/PLMV:

- to correct the timing for Recorded Music Monday – Saturday 10:00 to 00:30.

REASONS FOR DECISION

1. The Licensing Sub Committee considered all of the evidence before it including the written representations made by the applicant and the oral and written representations made by the licence holder, the responsible Authorities and the Interested Parties. Members had regard to the Council's Statement of Licensing Policy, the Licensing Act 2003 and the guidance promulgated pursuant to Section 182 of that Act.
2. Members noted that under paragraph 11.20 of the Section 182 Guidance, Members should seek to establish the cause or causes of the concerns that the representations identify and any remedial action taken should be directed at these causes where it considers them appropriate to the promotion of the licensing objectives.
3. In coming to its decision, the Sub-Committee was mindful to strike a healthy balance between residents' interests and support the night-time economy. Members are satisfied that the offered

conditions and additional conditions granted are appropriate to promote the licensing objectives and will address many of the representations received.

46 URGENT BUSINESS

There was no urgent business.

The meeting closed at 1.54 pm

Chairman
Date