

Coventry City Council
Minutes of the Meeting of Licensing and Regulatory Sub-Committee (Hearing)
held at 10.00 am on Monday, 3 July 2023

Present:

Members: Councillor F Abbott (Chair)
 Councillor S Keough
 Councillor R Lakha

Employees Present:

Law and Governance U Patel, T Robinson, A Wright

Streetscene and
Regulatory Services D Blackburn, R Masih

In Attendance S Manhertz (Trainee Solicitor)
(Observers): E McKindley (Trainee Solicitor)

In Attendance:
(Interested Parties) Applicant
 Applicant's Legal Representative
 Councillor J Gardiner (Objector)
 Resident (Witness on behalf of Objector)

Public Business

6. Appointment of Chair

RESOLVED that Councillor F Abbott be appointed as Chair for the hearing.

7. Apologies

There were no apologies for absence.

8. Declarations of Interest

There were no declarations of interest.

9. Application for a Premises Licence under the Licensing Act 2003

The Sub-Committee considered a Premises Licence Application for Kitchen 126, 126 Southbank Road, Coventry. The application requested the Sale of Alcohol (On and Off Sales) from Monday to Sunday from 1100hrs to 2200hrs.

One representation had been received from Councillor Gardiner, a Sherbourne Ward Councillor. She had objected on behalf of local residents on the basis that should the application be granted; it would undermine the licensing objectives of Prevention of Public Nuisance and Public Safety.

The Sub-Committee's statutory duty was to consider the application and any representations and to take such steps as contained in the Licensing Act 2003 as it considered appropriate for the promotion of the licensing objectives.

It was noted at the outset of the Hearing that Councillor Gardiner wished to present a petition to the Sub Committee. The Sub Committee agreed that Councillor Gardiner could have five minutes to present her petition before her twenty-minute time allocation to outline her objection. In the spirit of fairness, the Sub Committee also offered an additional five-minute time allocation to the Applicant in presenting her case. The Applicant notified the Sub Committee that she too had a petition, but she had been advised that it would not bear any weight, so it had not been formally submitted. The Sub Committee confirmed that they would not be able to take it into account when determining the application.

The Licensing Officer presented a summary of the application and confirmed that all application formalities had been complied with. One objection had been received on the grounds that the Licensing Objectives of Public Safety and Prevention of Public Nuisance were likely to be undermined, but that there had been no objections from any of the Responsible Authorities. The Licensing Officer further notified the Sub Committee that mediation had taken place between parties on 22nd June 2023, but no common ground could be reached.

The Applicant was invited to present her case. Her representative began by confirming that 12 licensed events had been held at the Premises using Temporary Events Notices over the last year. No complaints had been received until the event held on 28th May 2023, which she stated was a coincidence given that this was the first event held since the Applicant applied for the Premises Licence.

The representative described the premises as a welcome part of the community that local residents had on the whole, embraced. During the time it had been open, she stated that there have been no complaints made regarding smell or noise nuisance, despite the fact it is open every day. There was therefore, in her submission, nothing to warrant the Sub Committee having any concerns surrounding the granting of the Premises Licence.

With regard to the event held on 28th May 2023, the representative referred to a witness statement that had been submitted by a customer who described a small gathering of people, low level noise and no offensive smells from food. This was contrary to that claimed by Councillor Gardiner's witnesses, who were not at the event.

The representative further commented on the evidence submitted by Councillor Gardiner. She stated that the photograph of two parasols submitted by Councillor Gardiner did nothing to corroborate her assertions of overcrowding at the event. She also explained that the Premises was next door to a hairdressers which regularly plays loud music, and it would therefore be difficult for the local residents to fairly attribute noise to the Premises only.

The applicant's representative commented that one of the statements submitted by Councillor Gardiner was anonymous and that many of the allegations were vague and had little detail or context and offered no supporting evidence. The

representative questioned the legitimacy of the petition presented by Councillor Gardiner and alleged that it was conducted illegally using a logo that infringed IP rights held by the applicant. It was stated that the petitioners had been soliciting for signatures outside the area of the premises and nearby a premises previously operated by the applicant during 2020/2021 which was eventually closed due to planning issues. The Sub-Committee had confirmed previously that they would not be taking historic allegations into account but would concentrate on the application before them.

The applicant's representative referred to the issues raised by the local residents in relation to litter and parking. She stated that the bins are located directly outside the premises, and that the applicant often pays for private collections to ensure there were no issues with rubbish around the premises.

To conclude, the applicant's representative asked the Sub Committee to scrutinize the evidence presented by Councillor Gardiner and concentrate on the fact that up until the most recent event on 28 May 2023, after the licence application had been submitted and displayed, there had been no concerns at all surrounding nuisance from noise or smells, or any anti-social behaviour or public safety issues. In the circumstances, the representative concluded that the Sub Committee could confidently grant the Premises Licence.

The Sub Committee asked a number of questions on various matters and the applicant, and her representative responded accordingly.

The Sub Committee noted that:

- The premises has planning permission and had previously been operated as a café.
- No outdoor speakers are used, music is played using an Alexa speaker in the back room
- The outdoor space is run on table service, therefore, there will always be a member of staff outdoors waiting on tables
- No alcohol will be sold at the premises during normal operating hours as there is no capacity to do so. The whole venue has to be closed and cleared to create the necessary space for alcohol
- The premises would never be used as a bar. A reduction in hours applied for would be considered as all events held previously had concluded at 2000hrs

The Sub Committee then heard from Councillor Gardiner, the objector. She began by presenting a 60 signature petition that was objecting to the sale of alcohol. She stated that local residents were generally in support of the café, other than the additional parking pressure. However, she considered that the introduction of night-time economy and "honey pot" events used to attract more customers would undoubtedly cause nuisance.

Councillor Gardiner further stated that the applicant did not have a good track record for taking the concerns of local residents into account, particularly by holding events with thumping base music such as the one 28 May 2023. She stated that the only thing stopping the premises from becoming a wine bar was the licence and that the granting of such, would bring antisocial behaviour and crime

into a quiet residential area. She explained that the more customers in a confined area would mean more noise leading to sleep issues, including pets and local residents losing the use of their gardens and the ability to keep their windows open on hot days.

Councillor Gardiner stated that the premises were not designed to be an entertainment venue and that the area was already well served. She explained that the local residents were concerned that the premises would become popular and that the already difficult parking situation would become impossible.

Councillor Gardiner alleged that the Applicant lacked transparency by placing the statutory blue notice advertising the application in an obscure place, although she accepted that it had been checked twice and considered to be appropriately displayed. She also considered the Applicant's suitability to be called into question over her running of "Caravan at the Cottage" which was closed due to planning concerns in 2021.

In addition, Councillor Gardiner alleged that there had been issues over social media whereby supporters of the Applicant had been using bullying tactics to threaten supporters of the objectors.

At this point, Councillor Gardiner handed over to her witness. The witness stated that that on 28th May 2023, her life became "hellish" as her ability to use her space was taken from her. She explained that the noise from patrons of the Premises and loud base was intolerable and made her feel dizzy, sick and trapped. She said she was shocked at the number of people at the event and that it felt like a mini festival on her doorstep. She stated that she eventually gathered the courage to go into the Premises and complain, where she was greeted by a member of staff who looked her up and down and intimidated her. She describes the staff member as being dismissive and said they just said they had permission and would be holding more events throughout the summer. She stated that there was no offer to reduce the noise.

The witness stated that a short time later, she received an apology and an offer of cakes to her door which she refused. She said that the music was turned down slightly but that in total she endured five hours of noise before the event finished at 1915hrs. She also stated that she lost her peace and quiet on a sunny day and could no longer park outside her property. She said her health had suffered as a result and she had lost half a stone in the last three weeks. The witness said she felt she was being driven from the home she has lived in happily since 1974. She concluded by saying that the Premises was lovely, but an alcohol licence would ruin it.

In response to questions raised by the Sub Committee, the witness confirmed that the event on 28th May 2023 was a daytime event that finished at 1915hrs. There had been a further event on Father's Day, but there were no tables in the garden, and it finished at 1500hrs. There were no issues with this event.

The Sub Committee asked Councillor Gardiner to explain the term "honey pot" event. She explained that the term is used to describe an event designed to attract more people into one place at the same time.

The Sub Committee asked whether Councillor Gardiner, the witness, or anyone else, had contacted the Council's Environmental Health department to report the nuisance on 28th May 2023. Councillor Gardiner explained that the witness was unaware that this was the correct procedure and had instead written a letter to her which was posted to the Council. The Sub Committee asked whether Councillor Gardiner had referred the complaint to Environmental Health on the witness's behalf. She confirmed that she had had some contact with Environmental Health but that she then discovered the licence application and felt this should be prioritised. It had therefore not been taken further.

The Sub Committee asked the Licensing Officer whether they were aware of any issues raised, particularly with regard to nuisance, at any of the previous events held under a Temporary Event Notice. The Licensing Officer confirmed that she was not aware of any issues and that as Environmental Health were a consultee to the application, if there had been any concerns they would have raised an objection.

In summing up, Councillor Gardiner stated that the petition demonstrated that 128 local residents are unhappy with the prospect of the Applicant being granted a Premises Licence. She accepted that the normal day to day running of the Premises is conducted well but stated that the issue lies with the "honey pot" events which would cause noise, smell and parking nuisance in a quiet residential area. The Objector asked that the Sub Committee reject the application.

The Applicant's Representative summed up the Applicant's case. She stated that the Applicant had demonstrated a willingness to work alongside the local community, had offered solutions with regard to parking and had even offered to reduce the requested licensing hours in order to alleviate any concerns. She highlighted that no complaints have ever been formally made about the event held on 28th May 2023, or any other held at the Premises. She reiterated that the statutory notice was placed in a prominent position as required by law and this was checked twice by Licensing Officers who had no concerns. She asked that the Sub Committee grant the application.

Finally, the Sub Committee asked if the Applicant wished to offer a reduction in hours for consideration owing to what had previously been said. Following a short consultation with her representative, the Applicant confirmed that she wished to apply for licensing hours of Thursday to Saturday from 1600hrs to 2100hrs.

In reaching its decision, the Sub Committee considered the application on its own merits, having regard to both national guidance and the Council's own policy.

In accordance with the High Court's decision in *R (on application of Daniel Thwaites plc) v Wirral Magistrates' Court and Others (2008) EWHC 838 (Admin)*, the Sub Committee attached the appropriate weight to the fact that none of the Responsible Authorities, who are to be considered experts in their individual fields, had objected to the application.

In particular, the Sub Committee considered paragraph 9.15 of the Licensing Act 2003 Statutory Guidance which states that it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. It was noted that environmental health

had not objected, despite previous temporary events being held, suggesting no complaints had been received that gave cause for concern as to the promotion of the licensing objective of prevention of public nuisance.

The Sub Committee fully considered the submission provided by Councillor Gardiner as the Objector as well as the witness statements (both written and oral) and noted the petition signatories. The Sub Committee noted that a large proportion of the submissions surrounded parking issues in the vicinity of the premises, which is not a consideration for the purpose of determining a licence application and therefore, was not taken into account.

Having listened to all the evidence, the Sub Committee considered that the Applicant had demonstrated a willingness to take steps to prevent, so far as was possible, problems arising at or from the premises that may undermine the Licensing Objectives. However, the Sub Committee believed a condition should be added to the licence to ensure the promotion of the Licensing Objective of prevention of public nuisance:-

“There must be a sign displayed in a prominent position at the exit of the premises advising patrons that they are in a residential area and should leave quietly”

Having heard the representations from the Applicant, the Sub Committee was satisfied that the Applicant took her responsibilities in respect of the Licensing Objectives seriously, and that the concerns of local residents had been taken into account and this would continue to be the case.

The Sub Committee are satisfied that local residents are now aware that the procedure should they witness nuisance arising from the premises is to make an immediate report to the Council’s Environmental Health department. The Applicant is equally aware that if the premises prove to operate in any way that does not promote the Licensing Objectives, then the appropriate way for this to be addressed would be via a review of the licence.

RESOLVED that the application for a Premises Licence be granted in respect of Kitchen 126, 126 Southbank Road, subject to the following:

- 1. The time offered by the Applicant, Thursday to Saturday 1600hrs to 2100hrs.**
- 2. The following additional condition:**

“There must be a sign displayed in a prominent position at the exit of the premises advising patrons that they are in a residential area and should leave quietly”

10. Any Other Business

There were no other items of business.

(Meeting closed at 12.40 pm)