

Coventry City Council

Minutes of the Meeting of Licensing and Regulatory Sub-Committee (Hearing)
held at 10.00 am on Tuesday, 8 November 2022

Present:

Members: Councillor J Clifford (Chair)
Councillor L Bigham
Councillor S Keough

Employees Present:

Law and Governance S Ahmed, U Patel, C Sinclair

Streetscene & Regulatory Services J Glover, R Masih

In attendance: A Mono, Environmental Protection (on behalf of Review Applicant)
F Taylor, Environmental Protection (Review Applicant)
Respondents (Licensee)
Noise Consultant (on behalf of Licensee)

Public Business

1. **Appointment of Chair**

RESOLVED that Councillor J Clifford be elected as Chair for the meeting.

2. **Apologies**

There were no apologies for absence.

3. **Declarations of Interest**

There were no declarations of interest.

4. **Licensing Act 2003 - Application to Review Premises Licence**

The Sub-Committee considered an application to review the Premises Licence in respect of Rialto Reborn, 85 Moseley Avenue, Coventry. The application, submitted by Environmental Protection, requested the removal of the provision of live music and recorded music from the licence.

Environmental Protection submitted that the Licensing Objective of the Prevention of Public Nuisance had been undermined on a number of occasions. One representation was received during the review application process from an interested party in support of the review application on the grounds that the Licensing Objectives of the Prevention of Public Nuisance had been undermined.

None of the other Responsible Authorities had made representations.

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.

The Licensing Officer confirmed that the application was for a Premises Licence Review submitted by Environmental Protection and that one representation in support of the review had been received from a local resident. It was confirmed that all other licensing formalities had been complied with.

The Sub-Committee heard from Environmental Protection (the Applicant) that the reason behind their application was that they had received several complaints about noise nuisance from the premises. They stated that they had made attempts to work with the Licensee (the Respondent) to ameliorate the issues by conducting advice visits, providing verbal warnings, issuing warning letters, serving a noise abatement notice, issuing a final warning letter, and corresponding via numerous emails with the Respondent. The Applicant felt that the Respondent had not taken the matter seriously and had not adequately offered to manage the noise levels. The Applicant stated that a Noise Limiting Device was only fitted at the premises after notices had been issued. The Applicant further stated that the resident who had submitted the representation, regularly leaves her house on weekends to get away from the noise and therefore did not report any complaints to the Council during these periods. The Applicant was of the view that the noise levels from the premises was highly likely to be affecting other residents in the area. The Applicant commented that the Respondents had managed noise levels in the last few months only because a review of the premises licence had been called.

The Sub-Committee questioned whether there was a pre-set level agreed with Environmental Protection as per the condition of the licence. The Applicant stated that there are no pre-set levels and noise nuisance is measured subjectively. The Applicant further explained that the condition pertaining to a pre-set level of noise was no longer a licence condition for all premises licences of this type. The reason being that noise levels would differ from one event to another as such one pre-set level could not be appropriately applied to all types of events.

When questioned whether any further complaints had been made since June 2022, the Applicant stated that there had been no further complaints, however, the resident leaves her house most weekends and was therefore not available to experience noise nuisance to make a complaint. The Applicant accepted that the works undertaken by the Respondent thus far appeared to be successful in reducing noise levels but that the period of compliance could also be a result of the matter being called for a review.

The Respondent presented their case and began by outlining a brief history of the premises. They explained that their only source of income is through revenue from paid events such as Bongo Bingo but unfortunately, they had cancelled their contract at the premises due to the uncertainty with the review.

The Respondent explained that they have always taken their public responsibility extremely seriously. As such, they had responded to complaints and had liaised with both the Applicant and the resident to overcome issues. The Respondents reiterated that every effort was being made to resolve the issues and that if the

Sub-Committee were minded to remove the provisions for live and recorded music, the business would have to be closed down.

The Respondent confirmed the recent change of Premises Licence Holder to be Coventry Hospitality Ltd.

The Respondent addressed matters relevant to the concerns of the resident as outlined in their representation. They explained that there had only been one incident of police involvement since 2017. The Respondents conducted litter collection at and around the premises, in relation to noise complaints, the Respondents stated that they have a noise management plan in place and had taken steps to mitigate against issues of noise levels, such as installation of equipment, noise insulation to the walls and installation of permanent noise monitoring device placed in the bedroom of the local resident. The Respondent believed that they had demonstrated a genuine respect and concern for their neighbour. The Respondents submitted that the timeline of complaints and the works undertaken demonstrated that works undertaken thus far had been effective in reducing issues relating to noise.

The Respondent further explained that during the Covid pandemic there was no noise due to the premises being closed. However, with the reopening this attracted the attention of the resident with obvious changes in ambient sound levels.

The Respondent provided a further example of measures they had taken to address noise issues. In late July of this year, a Queen tribute act was permanently excluded from the premises as they did not comply with the noise impact levels. As an additional measure, the Respondent had offered the resident double glazing for her property which they believed would provide a further solution to reducing the impact of noise levels within the resident's property.

The Respondent clarified that they had not received a copy of the premises licence without the condition pertaining to a pre-set level agreed by Environmental Protection.

The Respondents invited the Sub-Committee to allow the licence to continue in the same way and to allow the further works to be undertaken.

The Sub-Committee questioned the further works proposed by the Respondent in their written representations. The Respondent explained that they were undertaking phase 4 of the proposed works which included acoustic insulation of the ceiling with the works due to start on 9 November 2022 for a period of 6 weeks. The Respondents assured the Sub-Committee that improvements would be continual even after the completion of the proposed phase 4 works and were willing to take further steps if required.

In their summing up, the Respondent explained that the Rialto is an organisation that concentrates on providing live music, culture and entertainment and is a resource for the City. They were actively seeking to rectify issues and would continue to do so. The Respondent stated that they did not react simply due to the challenge of this review, rather the Sub-Committee should note from the timeline of events that a whole process of mitigation has been ongoing, where substantial amounts of money had been spent to make improvements and the works would

continue. The Respondent expressed hope that the Sub-Committee could have trust in the Licence Holder that the venue is worth supporting.

The Applicant, in their summing up stated that the issues with noise have been ongoing for the past 5 years. They stated that the venue was historically a dance hall and as such not suitable for modern day live music. The Applicant explained that there had been two occasions where the Respondent had exceeded their own set level. The Applicant stated that the onus was not on the resident to mitigate against the noise issues by double glazing her property. They also stated that just because there are no representations made by other residents that it did not mean they are not affected. The Applicant explained that it was not for Environmental Protection to set levels as the Respondent had repeatedly been told that their noise levels were too high as such the Applicant invited the Sub-Committee to consider removing the provisions for live and recorded music whereby the Respondent could re-apply once further works had been undertaken.

In reaching its decision, the Sub-Committee considered the application for a review of a premises licence on its own merits and gave due consideration to the evidence available before them, including the representation made by one resident. The Sub-Committee had regard to both national guidance and the Council's own policy.

The Sub-Committee considered the options available to them when determining review applications. The Sub-Committee are constrained under the Licensing Act 2003 to take such action to promote the Licensing Objectives. As such, any action the Sub-Committee take, must be a reasonable and proportionate measure to address any identifiable issues.

The guidance to the Licensing Act 2003 states 'Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstance the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.'

The Sub-Committee, in applying the common law definition of public nuisance, were not satisfied that the licensing objective of public nuisance was being undermined given that only one resident had made a representation.

Having heard the facts and in considering the options available to them, the Sub-Committee was not satisfied that the evidence was sufficient to justify the action proposed by the Applicant and did not deem it reasonable and proportionate to take any further steps appropriate to promoting the Licensing Objectives.

The Sub-Committee considered that the Respondent had demonstrated a willingness to take steps to prevent, so far as is possible, problems arising at, or from the premises, that may undermine the licensing objectives such as instructing an acoustic consultant, undertaking extensive improvements to the premises and having liaised with the resident on an ongoing basis.

The Sub-Committee noted that there had not been any further complaints since June 2022 which they believed to be indicative of the work undertaken so far to be successful in resolving issues relating to noise levels.

Furthermore, there were no representations from other Responsible Authorities. The Sub-Committee took all this into account and welcomed phase 4 of the works proposed by the Respondent and hoped that this would further improve the situation.

RESOLVED that there be no action taken, the provision of live and recorded music is to remain in place in respect of the Premises Licence for Rialto Reborn, 85 Moseley Avenue, Coventry.

5. **Any Other Business**

There were no other items of business.

(Meeting closed at 1.20 pm)