

Coventry City Council
Minutes of the Meeting of Licensing and Regulatory Sub-Committee (Hearing)
held at 10.00 am on Tuesday, 15 November 2022

Present:

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

Employees Present:

Law and Governance: S Ahmed, U Patel, C Sinclair

Streetscene & Regulatory Services: R Masih, B Rawlings

In Attendance: N Chaplin – Environmental Protection (on behalf of Review Applicant)
 F Taylor – Environmental Protection (Review Applicant)

 Resident – Interested Party

 Licence Holder
 Counsel – on behalf of Licence Holder
 Designated Premises Supervisor – on behalf of Licence Holder

Public Business

1. **Appointment of Chair**

RESOLVED that Councillor L Bigham 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 a Premises Licence**

The Sub-Committee considered an application to review the Premises Licence in respect of The Pilot Hotel, Catesby Road, Coventry. The review application was submitted by Environmental Protection on the grounds that the licensing objective of the prevention of public nuisance had been undermined. The review application requested the removal of live and recorded music and the reinstatement of the previously removed licence condition: "The only consumption of alcohol to be permitted outside is in a designated area on Catesby Road at the front of the

premises. There is to be no consumption after 10pm". This condition was removed by way of a Premises Licence Variation application submitted by the applicant in November 2017.

One representation from a local resident had been received in support of the review application on the grounds that the licensing objective 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.

At the start of the hearing, the Sub-Committee confirmed that they had received all the relevant documentation and had viewed all of the video footage provided by the resident. All relevant parties also confirmed that they had received all the relevant documentation and had viewed the video footage submitted by the resident.

When asked by the Chair of the Sub-Committee whether any parties wished to submit any further documents, Counsel for the Licence Holder, with the agreement of all parties, submitted photographs of the works undertaken in relation to the front doors of the premises.

The Licensing Officer presented her report confirming 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 during the application process.

The Sub-Committee heard from Environmental Protection (the Review Applicant) that the reason behind their application was that they received several complaints about noise nuisance from the premises since February 2022 and directed the Sub-Committee to the noise monitoring reports contained within the agenda pack. The complaints were about noise arising from loud music and loud voices from customers at the pub. They explained that the current conditions stipulated that the doors and windows are to be kept closed during live music events however, there had been occasions where the doors had been left open leading to noise nuisance complaints from residents about noise levels.

On one occasion, rock music and noise emanating from the premises were almost a replica of club noise levels. Such incidents had led to the Review Applicant serving a Noise Abatement Notice in June 2022. Following the receipt of further complaints, the Licence Holder was written to in respect of these. A further complaint was received on 30 July 2022 and Officer's monitoring reports showed that there had been a statutory nuisance on that occasion which was a breach of the Noise Abatement Notice. This was caused by the outer doors being left open. The Review Applicant had advised the new Designated Premises Supervisor about reducing noise levels and of the need to comply with the licence condition to keep door and windows closed. However, the Review Applicant stated that a further complaint was received on 22 October 2022, this despite numerous

warnings issued to the Licence Holder, the management at the premises had failed to conform to the conditions of the Premises Licence.

The Review Applicant acknowledged that the Covid pandemic had brought challenges to the Licence Holder and the business, however they were of the view that the Licence Holder could not run events at the expense of local residents. The Review Applicant submitted that they had no confidence that further conditions would be adhered to by the Licence Holder regarding live and recorded music. As such, the Review Applicant invited the Sub-Committee to remove the provisions of live and recorded music from the Premises Licence.

The Review Applicant further invited the Sub-Committee to reinstate a previous condition regarding the beer garden such that the only consumption of alcohol was to be permitted outside in a designated area on Catesby Road, at the front of the premises and that there was to be no consumption of alcohol after 10.00pm. The Review Applicant submitted that this appeared to be the only recourse to address the issues faced by the residents on Burnaby Road.

The Sub-Committee noted that complaints regarding noise levels started in February 2022 and asked whether it was because music events had begun at the premises around that time. The Review Applicant explained that they began to receive complaints about noise levels in February 2022, however they could not ascertain whether it was because music events had begun at that time or what the situation was like prior to the complaints starting.

The Sub-Committee questioned whether the provision of live and recorded music had always been attached to the Premises Licence. The Licensing Officer confirmed that the provision of live and recorded music had been attached to the licence since it was granted in 2005.

The Resident then presented his case. He began by stating that he was not happy that the initial hearing had been adjourned and although he understood the lengthy process, his experience in relation to the noise issues meant that his quality of life had been severely impacted. The Resident had intended to provide a narrative over the video footage he had submitted, however due to technical issues, the showing of the video footage had to be abandoned. The Resident was content to continue without the video footage being shown given that the Sub-committee and the other parties had confirmed that they had sight of the footage ahead of the hearing.

The Resident explained the issues that he had been facing as a result of the noise nuisance emanating from the pub. The Resident stated that there are usually groups of people in the beer garden, causing a nuisance by talking loudly, shouting and swearing and that such noise could be heard clearly by the Resident from the inside of his property. He explained that there were 4 occasions where Environmental Protection Officers had visited his premises after he had made complaints of noise nuisance. On these occasions, the Officers witnessed that the noise emanating from the pub was loud enough to hear both upstairs and downstairs and with the TV on from within the resident's property. The Resident explained that this issue could be overcome if the beer garden was moved back to Catesby Road.

The Resident explained that on 14 November 2022, he had gone to bed at 10.00pm and at 11.05pm, he heard people in the beer garden and had observed people jumping over the gate to access the beer garden.

In making representations about loud music, the Resident explained that there had been 8 complaints made about the noise levels emanating from the premises where Officers had come out to assess the noise levels. He stated that there were instances where the music was so loud that he had no strength to contact Officers and wait their arrival as sometimes there would be long wait times. The Resident stated that after an entire week of working, one could reasonably expect to get a good sleep during the nights and weekends, except that noise arising from music nights at the pub was so bad that even if he wore earbuds and closed his double-glazed windows, the base was so deep that he could still hear it.

The Resident explained that in one of the video clips he submitted, a person crosses the road from the pub to smoke outside the Resident's house. The Residents submitted that the pub was designed to run from Catesby Road and not from Burnaby Road. The Resident further stated that he had no privacy as customers from the pub could look into his house. There had been occasions where customers had been standing in the middle of the road trying to stop cars. The Resident informed the Sub-Committee that a neighbour resident who has 3 children decided to move out of the area due to the noise and safety issues. The Resident submitted that the noise nuisance is impacting his mental health and that of the other residents. The Resident described his experience of the noise as being torturous and being kept in a prison and being forced to listen to loud noise levels.

The Sub-Committee did not have any questions for the Resident at this stage.

Counsel for the Licence Holder outlined their position. He explained that the pub had been on site for many decades and with it being a listed building it finds itself in the difficulties that it currently faces. Historically the pub was successful, although there had been a closure in 2010, Council explained that the current licence holder played no part in this and had bought the pub in an abandoned state in 2011 intending to renovate and redevelop it. But due to the Listed Building status, he could not carry out certain renovations. Counsel stated that it was not the Licence Holder's intention to run it as a pub and that if he could find someone else to run it for him, he would have done so. Parts of the building had been separated to allow different businesses to operate, these included a restaurant, flats on top and part of the outside area operated as a car wash. Counsel clarified that these were all separate businesses to the pub and as such, were all separate legal entities.

In addressing the proposals made by the Review Applicant, Counsel explained that there were a variety of different diagrams which mark the restaurant as a separate area to the pub such that the entrance to Catesby Road is used by the restaurant. And the pub was unable to access this entrance through the restaurant as this would infringe upon the lease of the restaurant. Counsel stated that the alternative to this was such that patrons would need to walk on to the road with glasses in their hands to get to Catesby Road. In addressing the Resident's comments about people jumping over the barrier structures currently put in place by the Licence Holder, (when closing off the beer garden at night), he explained

that restrictions relating to Listed Buildings precludes walls to be put in place to prevent people jumping over which meant that nothing more could be done to improve the situation. Counsel further stated that Historic England precludes improvements that might further enclose the beer garden area.

Counsel stated that in the absence of night-time entertainment and music in the premises, this would result in decreased footfall and the business would suffer. Counsel further stated that although business was improving since the pandemic, it was on a knife edge and as such the business was likely to be unviable if provisions for live and recorded music were removed from the licence.

Counsel explained that the reality of the situation given that the Listed Building status precludes change of use, the pub would have to be boarded up which might attract vandalism or lead to it being burnt down. This could remove the pub as a community space, as it was currently a popular community hub. Counsel stated that the Licence Holder recognised the issues faced by local residents and he accepts that there had been problems in relation to noise levels and the impact it has had on local residents.

Counsel explained that there had been a misunderstanding about exterior doors needing to be kept closed. The Licence Holder thought that the solid wooden doors were to be kept open as they were a health and safety hazard as they do not have windows and as such could cause an accident between people entering and existing the premises. Counsel stated that the Licence Holder had made and implemented changes recently to remedy the issues such as modifying the doors with the installation of windows and automatically closing mechanism, to ensure they were closed when music was being played. Furthermore, a Designated Premises Supervisor (DPS) had been appointed and a new sound monitoring system had been installed to keep noise levels in check.

Counsel questioned what weight should be attached to the video footage submitted by the resident. He referred to a video clip which related to the most recent complaint, received after the changes had been implemented at the premises, and submitted that the noise levels during the clip were quite low and that it was difficult to hear the music. The Sub-Committee were invited to compare and contrast this with the monitoring reports provided by the Officers in relation to previous complaints, where on those occasions, the doors were open and the noise levels were greater. Counsel stated that it was important to draw a distinction between the current situation with the new changes as compared to the situation prior to the changes.

The Sub-Committee questioned whether the doors from which the noise had been emanating should have been closed given that they were fire doors and leaving them open could amount to a breach of fire safety regulations. And whether the doors had been left open on more than one occasion. The Licence holder explained that the doors had been left open, but that was to the back of the premises and not on the Burnaby Road side. He further stated that he was not sure which doors were being referred to by the Sub-Committee. He assumed that reference was being made to either the two security doors at the front which look like fire doors or the doors at the back which are fire doors.

The Review Applicant clarified that the two doors at the front were not fire doors as established by a fire officer.

In his summing up, the Resident stated that the 8 complaints about the noise nuisance demonstrated that the impact of the noise levels was a real issue to residents and that it was simply unacceptable behaviour on part of the Licence Holder. He stated that the noise could be heard from his house and that the fire doors needed to be kept closed. He added that the business was designed to operate from the two doors on Catesby Road and not Burnaby Road. The Resident stated that the business did not care about the residents and should the beer garden remain on Burnaby Road, the problems would persist. The Resident thought that the Premises Licence should be suspended for 9 months to reflect the time period of residents tolerating the issue. He was also of view that entertainment should be removed and that closing times should be 11.00pm. The Resident believed that this would allow residents a better chance of getting peaceful sleep at night.

The Licence Holder was invited to sum up and Counsel on his behalf stated that the pub had been providing live entertainment since 2013 and during the pandemic, footfall had dropped, and business had decreased. He further stated that the complaints span a period of only 9 months and there had been no complaints prior to this. Counsel further stated that the Licence Holder did not seek to undermine the complaints but submitted that he had taken steps to address the issues. Counsel explained that if live entertainment was to be removed, it was likely that the pub would need to be boarded up. The pub could not function as anything else due it being a listed building. Counsel suggested that an acceptable level of sound should be set such that if the Licence Holder should fail to adhere to such pre-set levels, then further action could be taken at that stage. Counsel stated that principal security doors would remain closed.

Furthermore, Counsel stated that the restaurant was a standalone entity. The pub could not be entered or exited from Catesby Road as this was the entrance and exit to the restaurant. Counsel explained that the pub was currently closing one hour earlier than the closing times stipulated within the Premises Licence, lights were being switched off in the beer garden, the jukebox volume would be reduced further, and the barriers would remain in place to close off beer garden when closed. Moreover, Counsel explained that since the changes had been implemented, the Designated Premises Supervisor had been concerned about the impact of noise levels and so had been recording videos such that if there were complaints, there was evidence available on part of the pub. Counsel invited the Sub-Committee to consider that there should be proper testing and for the Premises Licence to function as it stands.

In their summing up, the Review Applicant stated that although they understood the difficulties that businesses faced, there had been a number of complaints about noise nuisance whereby the noise had been deeply intrusive into residents' homes and had had a detrimental effect on residents in the area. The Review Applicant stated that they had tried to resolve the issues via visits, advice and letters but such attempts had been ignored by the Licence Holder. The Review applicant explained that they understood the layout difficulties regarding the different entrances to the pub and restaurant, but that it was the Licence Holder who chose to do this. The Review Applicant submitted that they did not have

confidence in the pub's management and stated that the recent measures by the Licence Holder could have been implemented at a much earlier stage.

In reaching its decision, the Sub-Committee considered the application for a review of a premises licence on its own merits and due consideration was given to the evidence available to them including the representation made by a local resident and the Sub-Committee having 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 were constrained under the Licensing Act 2003 to take such action to promote the Licensing Objectives. As such, any action the Sub-Committee decide must be a reasonable and proportionate measure to address any identifiable issues.

The guidance to the Licensing Act 2003 states that '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 circumstances the reductio 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 to the evidence available before them, were satisfied that the Licensing Objective of Public Nuisance was being undermined.

The Sub-Committee considered that the Licence Holder was provided with sufficient warnings and failed to heed to such warnings in a timely manner. There was an acceptance on part of the Licence Holder that the noise levels emanating from the premises were causing issues to local residents albeit the explanation given was that of a misunderstanding of the licence conditions currently in place, in relation to doors and windows to be kept closed.

Furthermore, having reviewed the video footage provided by the Resident, the Sub-Committee were satisfied that the noise levels emanating from the premises were causing a nuisance to nearby residents.

The Sub-Committee noted that the Licence Holder was putting measures in place to address the issues; however, they considered that such measures could have been put in place at an earlier stage. They noted that the Review Applicant received complaints even after the new Designated Premises Supervisor was given advice on how to keep noise levels reduced and was reminded of the licence condition about doors and windows to be kept closed. As such, the Sub-Committee did not have confidence that the recent changes would result in the Licensing Objective of the Prevention of Public Nuisance being upheld.

RESOLVED that the Licensing Sub-Committee, having heard all of the evidence from all of the parties, and having reviewed all of the papers provided in advance of the hearing, including the video footage submitted by the Resident, decided to:

1. **Exclude the provision of live and recorded music from the Premises Licence.**
2. **Reinstate the previous condition relating to the beer garden such that the only consumption of alcohol to be permitted outside is in a designated area on Catesby Road at the front of the premises and that there is to be no consumption of alcohol after 10.00pm.**
3. **Reduce the opening times to be in line with the opening times that are currently in place now, those being Sunday to Thursday 10.00am to 11.00pm and Friday to Saturday 10.00am to 12 midnight.**
4. **The hours pertaining to being open to the public shall align with the opening hours and therefore there will be no extension in place, this is to encourage earlier dispersion of customers, as such last orders will be 30 minutes before closing.**

5. **Any Other Business**

There were no other items of business.

(Meeting closed at 1.20 pm)