

Licensing Sub-Committee

Meeting of held on Monday, 8 April 2024 at 10.30 am in MS Teams

MINUTES

Present: Councillor Patsy Cummings (Chair);
Councillors Margaret Bird and Danielle Denton

PART A

7/24 **Appointment of Chair**

It was **MOVED** by Councillor Bird and **SECONDED** by Councillor Denton and **RESOLVED** to appoint Councillor Patsy Cummings as Chair of the meeting.

8/24 **Disclosure of Interests**

There were none.

9/24 **Urgent Business (if any)**

There were no items of urgent business.

10/24 **Licensing Act 2003 - Application for Review of a Premises Licence at The Foxley Hatch, 8-9 Russell Hill Road, Purley, CR8 2LA**

The Chair outlined the procedures for the Licensing Hearing in line with the Licensing Act 2003 and the Council's protocol.

The Premises Licence Holder, Donal Ennis was present.

The Licensing Officer introduced the report to the Sub-Committee. The review mechanism within the Licensing Act 2003 was explained.

The application for review had been made by a local resident as an 'other person' and was regarding the prevention of public nuisance licensing objective.

The premises licence had been granted by way of transfer on 22 December 2023, the premises licence was included in the agenda pack at Appendix A2. The premises licence permitted the sale by retail of alcohol on and off the premises and the provision of regulated entertainment namely recorded music throughout the premises without restriction on time.

The requirement for a Designated Premises Supervisor for a premises licence for the sale of alcohol was noted. It was advised that in premises with a licence for the sale of alcohol, recorded music was not a licensable activity between the hours of 8.00am and 11.00pm.

No other parties had made representations on the application. Further information provided by both parties had been circulated for consideration by the Sub-Committee.

In response to questions from the Sub-Committee officers advised of the administrative process to transfer a premises licence to another person. Any changes sought required a formal application for a variation to a premises licence.

The Sub-Committee queried the council Noise Pollution Team's involvement to date. It was advised the Noise Pollution Team had received 2 noise complaints this year and an officer had been in contact with the applicant in February 2024. There were no representations from responsible authorities on the application. It was confirmed the Noise Pollution Team would respond to further complaints. Nothing had been witnessed to date and there had been liaison between the Premises Licence Holder and applicant for review.

The applicant for review was not present, however they had requested for the Sub-Committee to listen to the audio clips and view the video submitted in support of the application.

The public webcast of the meeting was paused to view the video and resumed shortly after.

The Sub-Committee listened to audio clips submitted by the applicant for review. It was noted that the timings of the recordings were unknown and the written representations from the applicant were also to be considered by the Sub-Committee.

It was noted that live music between the hours of 8.00am and 11.00pm was not a licensable activity. There was no set decibel level for music and public nuisance was measured subjectively with premises licence holders expected to take measures to ensure the licensing objectives were not compromised.

The Premises Licence Holder, Donal Ennis was given the opportunity to speak and advised:

- They had not been aware of the application for a Licence Review until the initial meeting with the council Licensing Team at the premises.

- The initial complaint had stated the premises was had been illegally trading by selling alcohol and playing music until 3.00am.
- CCTV was not in place at the time to disprove this.
- Since the initial meeting the premises manager had purchased a decibel reader. Readings had been taken on every occasion live music had been played within the premises at 55-60 decibels.
- They had contacted the applicant and offered to purchase a white noise machine and agreed to take decibel readings.
- The premises manager had been proactive.
- There had been allegations between both parties.

In response to questions from the Sub-Committee the Premises Licence Holder advised they understood a decibel reading of higher than 65 decibels would be deemed excessive. The premises manager had been contacting the Premises Licence Holder to confirm when bands had finished playing. They were not aware of sound proofing within the premises.

The Sub-Committee asked if the area outside the premises was kept clean and if they were aware of the presence of rats as stated in the application. The Premises Licence Holder advised the premises was not currently offering food, the kitchen was closed and tidy.

The Sub-Committee queried the regularity of the live music. It was advised live music took place at the weekend only, on a fortnightly basis. The premises was trying to differentiate itself from other premises locally and had introduced live music to attract customers.

It was confirmed the initial review meeting with the council Licensing Team had taken place on Tuesday 20 February 2024.

The Sub-Committee suggested the Premises Licence Holder may benefit from sending an independent person to attend the premises during live music performances. The Premises Licence Holder agreed this could be possible and advised they had made phone calls to the premises manager during the performances and received photographs.

The Sub-Committee queried whether there had been any communication with other local residents, noting this could support with addressing any issues at an earlier stage. It was advised that they had spoken with local business owners and residents as customers. The manager's telephone number was available publicly on the premises google listing.

It was clarified that the Premises Licence Holder had agreed with the applicant to closely monitor the noise levels during music performances, oversee the premises manager and had provided assurances to the applicant.

All parties were invited to make final comments.

The Licensing Officer clarified that the council's Noise Pollution Team would measure noise levels from within a complainant's premises and the 65-decibel

level cited would likely be expected at a public event. It was suggested the Premises Licence Holder could contact the council's Noise Pollution Team or an independent party to seek guidance on noise nuisance.

The Premises Licence Holder noted the seriousness of the application for a review of a premises licence and felt the applicant had been unreasonable. The Chair noted that the applicant was not present to respond to the statements made.

The Chair thanked all parties for their participation in the hearing.

After the hearing the Sub-Committee withdrew to the virtual deliberation room and **RESOLVED to take no further action, however pursuant to paragraph 11.17 of the Statutory Guidance, resolved to issue an informal warning to the premises licence holder.** The reasons for this decision are set out in the Statement of Licensing Sub-Committee decision as follows:

LONDON BOROUGH OF CROYDON STATEMENT OF LICENSING SUB-COMMITTEE DECISION

The Licensing Sub-Committee considered the Application for a review of a Premises Licence at **The Foxley Hatch, 8-9 Russell Hill Road, Purley, CR8 2LA**, the representations received as contained in the report of the Corporate Director Sustainable Communities, Regeneration and Economic Recovery and supplementary information received from both parties prior to the commencement of the review hearing.

The Sub-Committee noted that the Applicant for review had indicated that they would not be attending the hearing and did not do so, but the Sub-Committee was able to consider their written representations and further information provided in support of the review. The Sub-Committee heard the verbal representations of the premises license holder as well as giving consideration to the written representations.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003 ("the Act"), Statutory guidance under Section 182 of the Act and the Council's Licensing Policy 2023-2028, considered whether it was necessary for the promotion of the Licensing Objectives to take any of the following steps: to modify the conditions of the licence; exclude a licensable activity from the scope of the licence; remove the designated premises supervisor; suspend the licence for a period not exceeding 3 months; to revoke the licence or to take no further action. The Sub-Committee **RESOLVED to take no further action, however pursuant to paragraph 11.17 of the Statutory Guidance, resolved to issue an informal warning to the premises licence holder as detailed below;** on the basis that the

Sub-Committee were satisfied that it would be appropriate to promote the licensing objectives to do so.

The reasons of the Sub-Committee were as follows:

1. The Sub-Committee noted that the premises are situated on the A23 in a parade of shops, takeaways and restaurants with residential premises above. The opposite side of the road similarly has a parade of shops, takeaways and restaurants as well as a bus stop. There are also residential premises on the opposite side of the road above these premises. It is a short distance from the junctions with A235 and A22.
2. The Sub-Committee noted that there were no concerns being raised by the Police on crime and disorder grounds nor from the noise nuisance team in respect of public nuisance.
3. The Sub-Committee were mindful of the general expectation, in relation to enforcement including the instigation of a review, that it be part of a stepped/graduated approach (save in circumstances such as those of serious crime and/or disorder, closure orders or similar) and that ordinarily, there would have been involvement from, and guidance issued by, responsible authorities to a premises licence holder prior to taking the step of proceeding for a review. This has not occurred here and there are no current investigations by responsible authorities in relation to this premises, although the applicant for review has reported matters to the police and to the noise nuisance team.
4. The Sub-Committee also noted that there is an expectation that premises licence holders work with residents and responsible authorities to ensure that the licensing objectives are supported. There appear to have been a series of initial conversations between the parties where the Premises Licence holder indicates that he had undertaken to the Applicant to closely monitor the noise levels in the premises and contact details for the manager were said to be publicly available for residents with concerns to make use of. Subsequently, it appears that the relationship between the applicant for review and the premises licence holder and manager of the premises has deteriorated with allegations and assumptions being made on both sides. The Sub-Committee made clear that it would not hear so called bad character statements by one party in circumstances where the other party was not able to comment or counter these. The Sub-Committee does not support or condone abusive or inappropriate forms of communication from either party; however it does appreciate that tempers will flare on occasion particularly where one party feels that their concerns are being disregarded or feels they are not able to have a reasonable expectation of enjoyment of their own home, or matters are detrimentally impacting their children. Conversely the premises licence holder is running a business and a balance needs to be found between the needs of residents and those of the premises licence holder which ultimately support the licensing objectives.

5. The Sub-Committee were clear that all licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user, as the case may be. The determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. The Sub-committee took into account the provisions within the Statutory Guidance at paragraph 9.44 which provides that determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.
6. In respect of the Licensing Objective of prevention of public nuisance, the Sub-Committee noted the importance of focussing on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable, as is suggested by the Statutory Guidance. The Sub-Committee were also mindful that Paragraph 2.22 of the Statutory guidance provides that whilst public nuisance is given a statutory meaning in many pieces of legislation it is not narrowly defined in the 2003 Act and retains its broad common law meaning. *“It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.”*
7. However, there is a distinction to be drawn between private and public nuisance and it is the latter which is within the gift of the Licensing Sub-Committee as a licensing objective, not the former. As set out in *R V Rimmington and Goldstein [2005] UKHL 63* per Lord Bingham, “[Public Nuisance is where] the effect of the act or omission is to endanger the life, health, property... or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty’s subjects.”
8. In *Attorney General v PYA Quarries Ltd [1957] 2 QB 169* per Romer LJ [at p 184] “...any nuisance is ‘public’ which materially affects the

reasonable comfort and convenience of life of a class of Her Majesty's subjects. The sphere of the nuisance may be described generally as 'the neighbourhood'; but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case. It is not necessary, in my judgment, to prove that every member of the class has been injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected..."

9. The Sub-Committee heard that the provisions on the current licence which provide: "Recorded music may be provided throughout the premises without restriction on times" was a historic "embedded right" which the premises license benefits from currently as a result of the conversion of the licence, in 2005, from a licence under the Licensing Act 1964 to a licence under the Licensing Act 2003. There is no similar permission in relation to live music.
10. The Sub-Committee, as expressed to the parties during the hearing, confirmed that the provision of live music (amplified or unamplified) and/or the provision of background music between the hours of 8am and 11pm are not regulated activities under the Licensing Act 2003 provided certain criteria are met (including that amplified or recorded music takes place in a premises licensed for the sale of alcohol and where the audience does not exceed 500. Unamplified music is permitted during those hours without restriction as to premises). However, that does not mean that the premises license holders are not responsible for ensuring that such provision does not contravene the Licensing Objectives, including the prevention of Public Nuisance.
11. Much was made by the Premises Licence Holder of decibel level readings which had been taken to ostensibly ensure that the level of the music was not too loud. As indicated to the Premises Licence Holder during the course of the hearing, decibel levels (i.e. volume) are only one factor which is taken into account in considering whether or not, in the professional opinion of a noise pollution officer, noise is considered to be a nuisance. Matters such as time of day, frequency, type and volume impact on this assessment. There are also impacts in terms of vibration which can detrimentally impact residents. It was suggested to the Premises Licence Holder that he take independent advice regarding the noise levels and to seek guidance from the Noise Nuisance team in this regard. The Sub-Committee were advised that the noise nuisance complaints which had been made by the Applicant would be investigated in due course. The Sub-Committee noted that the noise nuisance team are a responsible authority so that if they felt, following investigation and if necessary, a graduated process of enforcement involvement, that it was necessary to institute a review of the premises, that was within their authority to do so regardless of the outcome of this or any other review.

12. Whilst the Premises Licence Holder suggested that it may be for the Applicant to request that the landlord for their home consider insulation, the Sub-Committee did not consider that this was an appropriate or helpful suggestion bearing in mind that the reason the Applicant had felt the need to raise concerns was not through a change in their activities but by virtue of a change in how the premises was being operated since December 2023 under new ownership and it is for the premises licence holder to consider how they ensure that their operations do not adversely impact on the licensing objectives, including prevention of public nuisance.
13. To the extent that music – whether live (amplified or unamplified) or background - is being played beyond 11pm, such provision is licensable and the Sub-Committee is, where its discretion is engaged, able on review to take a number of actions including to modify the conditions of the licence; exclude a licensable activity from the scope of the licence; remove the designated premises supervisor; suspend the licence for a period not exceeding 3 months; to revoke the licence or to take no further action to the extent that it considers appropriate for the promotion of the Licensing Objectives. In addition, whilst ordinarily conditions in relation to live or recorded music between 8am and 11pm may not be enforceable in circumstances where the entertainment activity itself is not licensable, where the Sub-Committee are considering a review where the playing of live or recorded music is in issue, their discretion under Section 177A of the Licensing Act 2003 is potentially engaged and depending on the nature and probity of the representations, the Sub-Committee may be minded to determine that the provisions of S177A apply to the licence subject to review. If that is the case, the Sub-Committee is able to impose conditions pertaining to live and/or recorded music in relation to the premises during the period 8am – 11pm.
14. In respect of the information provided variously by the parties as to volume of noise, timings and their respective interpretations thereof, the Sub-Committee chose not to make any findings in that regard as there was no independently verifiable way in which to corroborate either parties statements and information in this regard and the accuracy or otherwise was disputed by the other. For example, the decibel reading pictures could have been taken at any time of day and the figures alongside the audio recordings taken on an iPhone were showing the length of time of the recordings and not the times of day of the recordings. The Sub-Committee did note however that the video recording from CCTV was date and time stamped although even in that regard there was some disagreement between the parties as to what this demonstrated.
15. In light of the above, the Sub-Committee considered that whilst it was not appropriate to take further action in terms of review outcomes, it was appropriate for the promotion of the Licensing Objectives to issue

an informal warning to the premise licence holder, as envisaged by paragraph 11.17 of the Statutory Guidance, to the effect that:

There is an expectation that premises licence holders work with residents and responsible authorities to ensure that the licensing objectives are supported and that the Premises Licence Holder consider how they might better engage constructively with residents, whilst appreciating that this required a willingness of residents to positively engage in this manner. In addition, regardless of the provisions on the licence, premises licence holders are responsible for ensuring that provision of regulated activities under the Act do not contravene the Licensing Objectives, including the prevention of Public Nuisance. Finally the Sub-Committee wished to remind the Premise Licence Holder about their powers under Section 177A of the Licensing Act 2003 and the ability, in appropriate circumstances, to determine that the provisions of S177A apply to a licence subject to review. Where that is the case, the Sub-Committee would then be able to impose conditions pertaining to live and/or recorded music in relation to the premises during the period 8am – 11pm which is ordinarily unregulated by the Act.

The Sub-Committee wished to thank all participants for the manner in which they engaged with and supported the hearing in providing information to allow the Sub-Committee's consideration.

11/24 **Exclusion of the Press and Public**

The following motion was moved by Councillor Cummings and seconded by Councillor Denton to exclude the press and public:

Pursuant to the provisions of regulation 14 paragraph (2) of the Licensing Act 2003 (Hearings) Regulations 2005, the licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public. For the purposes of paragraph (2), a party and any person assisting or representing a party may be treated as a member of the public. In light of the possibility of disclosing personal data if the circulated by a party to the hearing were made available in public.

The motion was put and it was agreed by the Sub-Committee to exclude the press and public for the consideration of the video submitted by the applicant for Item 5. Licensing Act 2003 – Application for Review of a Premises Licence at The Foxley Hatch, 8-9 Russell Hill Road, Purley, CR8 2LA.

The public webcast of the meeting was paused and resumed shortly after.

The meeting ended at 11.25 am

Signed:

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Date:

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