

CITY OF
WOLVERHAMPTON
COUNCIL

Statutory Licensing Sub-Committee

Friday, 29 April 2022

Dear Councillor

STATUTORY LICENSING SUB-COMMITTEE - FRIDAY, 29TH APRIL, 2022

I am now able to enclose, for consideration at next Friday, 29th April, 2022 meeting of the Statutory Licensing Sub-Committee, the following documents that were unavailable when the agenda was printed.

Agenda No Item

- 3 **Licensing Act 2003 - Application for a Variation of a Premises Licence in respect of The Hollybush, 494 Penn Road, Wolverhampton, WV4 4HU**
(Pages 3 - 22)

If you have any queries about this meeting, please contact Democratic Services:

Contact Donna Cope

Tel 01902 554452

Email donna.cope@wolverhampton.gov.uk

Address Democratic Services, Civic Centre, 1st floor, St Peter's Square,
Wolverhampton WV1 1RL

Encs

This page is intentionally left blank

From: Greg Bickerdike [REDACTED]
Sent: 27 April 2022 17:33
To: Licensing [REDACTED]
Subject: RE: Full Variation - PRE374 The Hollybush, 494 Penn Road, Penn, Wolverhampton, WV4 4HU

Anita,

The agent has agreed to the additional conditions below. Therefore, acting in my capacity as Responsible Authority for the Licensing Authority, my concerns raised in my representations have been allayed.

Prevention of crime and disorder

An electronic or written incidents log will be maintained at the premises with a record of all incidents of crime and disorder reported to or by the premises; all ejections of patrons; seizures of drugs, offensive weapons, fraudulent ID or other items; any visit by a relevant authority or emergency service. The incidents log will be produced to an officer of a responsible authority upon lawful request. Where management believe that a crime has been committed on the Premises, the incident will be reported to the West Midlands Police. The incidents log will be kept for at least 12 months and will be produced to an officer of a responsible authority upon request.

All customer-facing staff to receive training in close proximity to their starting date, when the premises is open to the public and refresher training every six months on their responsibilities with regard to licensing legislation, underage and proxy sales. Training will also cover Challenge 21, recognising signs of drunkenness, how to refuse service, the premises' duty of care, the preservation of a crime scene and the hours and conditions in force under this licence. This training must be documented and produced to an officer of a responsible authority upon request.

Protection of children from harm

The Challenge 21 scheme will be operated to ensure that any person who appears to be under the age of 21 will provide documented proof that they are over 18 years of age. Proof of age will only comprise a passport, photo card driving licence, an EU/EEA national ID card or a card bearing the PASS hologram.

An electronic or written refusals log will be maintained at the premises with a record of all refusals of admission or service, including the sale of alcohol. The refusals log will include the basis of a refusal; the person making the decision to refuse; the date and time of refusal. The refusals log will be kept for at least 12 months and will be produced to an officer of a responsible authority upon request.

Kind regards,

Greg Bickerdike
Licensing Manager

[Redacted]

[Redacted]

City of Wolverhampton Council

[Redacted]

CAUTION: This email originated from outside of the council. Do not click links or open attachments unless you are sure the content is safe.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Licensing Act 2003 – Application for a Variation of a Premises Licence in respect of The Hollybush, 494 Penn Road, Penn, Wolverhampton,

WV4 4HU

Sub- Committee 29th April 2022

Proposed conditions to be applied to the Operating Schedule in the event Variation is to be granted

1. No amplified music shall be played on the exterior part of the premises after 21:00hours, and the exterior sound system shall be turned off.
2. The Licensee or management shall carry out regular noise monitoring during any outdoor event held on the exterior part of the premises, to ensure noise levels are at reasonable levels, and not likely to cause a public nuisance to local residents.
3. Regular monitoring of noise and vibration levels shall be carried out during outdoor event operation, at a position at the perimeter of the premises close to the nearest noise sensitive locations.
4. A record shall be kept of any monitoring undertaken, including the date, time and location, and who undertook the monitoring. Records shall be kept for a period of 6 months and shall be made available on the request of an authorised officer of Wolverhampton City Council.

This page is intentionally left blank

APPLICATION TO VARY THE PREMISES LICENCE

PREMISES: THE HOLLYBUSH, 494 PENN ROAD, PENN, WOLVERHAMPTON, WV4 4HU

WRITTEN SUBMISSION ENVIRONMENTAL PROTECTION SERVICE REPRESENTATION

The Applicant

1. The Applicant is a PLC operating company known as Marston's PLC who is also the Premises Licence Holder for the above premises.
2. The Applicant is a well known and very successful hospitality business who is the operator of over thousands of premises similar to these premises across England, Wales and Scotland.

The Proposal

3. The Applicant seeks to vary the Premises Licence in three parts:
 - a. To vary the hours for sale of alcohol (early hours);
 - b. To vary the opening hours of the premises; and
 - c. To seek the removal and amendment of duplicated or outdated conditions on the Premises Licence.
4. Within the conditions referenced at 3c above, the Applicant is seeking to amend a condition (amongst others) on the Premises Licence which currently states ("**the Condition**"):

"No music shall be played on the exterior part of the premises after 21:00 and the exterior sound system shall be turned off"

The proposed amendment is as follows:

"No music shall be played on the exterior part of the premises after 23:00 and the exterior sound system shall be turned off."

(to be referred to as "**the Amended Condition**")

5. The Application has received 4 objections in total. The objectors are the Licensing Authority, Environmental Health ("**EHO**"), a local resident and a local councillor, councillor Hibbert of the Penn Ward.
6. The Licensing Authority and been in dialogue with the Applicant's solicitor and has reached an agreement regarding a set of conditions to be placed on the licence. This agreement has resulted in the Licensing Authority's concerns being "allayed".
7. It is believed that the EHO objection is solely in respect of the Amended Condition and we detail the EHO objection below:

"I write on behalf of Environmental Health as a Responsible Authority.

Under the licensing objective of prevention of public nuisance, I would like to object to their wish to vary the condition relating to outdoor music from 21:00 to 23:00, due to the close proximity to residential properties"

This objection was made by Rita Braham, a Senior Environmental Health Officer on behalf of Environmental Health.

8. The justification for proposing the Amended Condition in this application is to assist members of the public and the Responsible Authorities to bring the conditions of the Premises Licence in line with the current legislation specifically, regarding live and recorded music within a licensed premises.
9. To clarify, the premises' outdoor area is licensed for licensable activities (including sale of alcohol) and was done so at a sub-committee hearing on 2nd December 2016, granting an application made by the Applicant.

EHO's Position

10. In communications with the Applicant's legal representatives, the EHO has kindly informed the Applicant that their concerns are based on the live music being played outside which may cause a nuisance. The EHO has kindly stated in an email to the Applicant's solicitor dated 27 April 2022 (20:28) "*the council have received one noise complaint concerning the Hollybush, therefore history of complaints is not my main concern.*"
11. The EHO concerns therefore relate to any further issues that could arise from amplified sound in the external area.

Legal Representation

12. The issue before the Sub-Committee is therefore the extent to which amplified sound can be controlled by the Sub-Committee in this instance.
13. The Sub-Committee cannot condition activities which are not defined as 'regulated activities' within the Licensing Act 2003 ("**the Act**").

14. Following amendments to the legislation by the Live Music Act 2012 ("**Music Act**"), as amended by the Legislative Reform (Entertainment Licensing) Order 2014 (in April 2015) Live and Recorded Music are no longer deemed to be regulated activities.

15. Paragraph 12A of the Music Act reads:

"12A: Live music in licensed venues

(1) The provision of entertainment consisting of one or both of the following is not to be regarded as the provision of regulated entertainment for the purposes of this Act if the conditions in sub-paragraph (2) are satisfied—

- a. a performance of live music;*
- b. the playing of recorded music.*

(2) The conditions referred to in sub-paragraph (1) are that—

- a. the requirements of section 177A(1) are satisfied, and*
- b. conditions are not included in the premises licence or club premises certificate referred to in section 177A(1)(a) by virtue of section 177A(3) or (4)."*

16. The conditions of s.177A(1) (a) to (c) are:

- (a) music takes place on premises which are authorised by a premises licence or club premises certificate to be used for the supply of alcohol for consumption on the premises,
- (b) at the time of the music, the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises,
- (c) if the music is amplified, it takes place in the presence of an audience of no more than 500 persons

- (d) the music takes place between 8am and 11pm on the same day (or, where an order under section 172 has effect in relation to music, during any times specified under that order).

17. In addition, the music must take place between 8am and 11pm on the same day.

18. The Legislation is permissive and leads the Sub-Committee to proceed on the basis that the Applicant will control their business in such a way as to promote to the Licensing Objectives in the context of public nuisance (during the unregulated period). To assume otherwise would clearly be contrary to intentions of Parliament.

19. In this instance there is no evidence that the Applicant intends to operate inappropriately or inconsiderately. It would be untenable for a Sub-Committee to adopt the opposite position and refuse applications (or parts thereof) they cannot condition, as this would lead to the refusal of all new licence applications (or parts thereof) to which the deregulation applies. This cannot have been the intention of Parliament, nor is it borne out by the national application of the deregulation provisions. The relevant legislation provides appropriate checks and balances.

20. The Applicant's position is that the Sub-Committee would be acting beyond their legal power and authority to impose a restriction on the licence which sought to limit or prohibit an unregulated activity at these premises as requested to do so by the EHO.

21. The Applicant's proposal in the Application, which states:

'Noise or vibration shall not emanate from the premises so as to cause a nuisance to nearby properties. The Premises Licence Holder shall ensure regular exterior perimeter checks are made at the boundaries of the premises to monitor this.'

22. As directed by the national guidance (s.182 of the Act Guidance) conditions imposed upon a licence must be enforceable, should not duplicate other statutory requirements, should be proportionate, justifiable and be capable of being met (para 1:16).

23. In addition, paragraph 1:16 states conditions should not be *"standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case"*.

24. The above condition regarding the monitoring of the noise level around the perimeter of the premises is appropriate and proportionate and should be the condition proposed by the Sub Committee to address the EHO's concerns regarding the amplified sound and noise in the external area.

DATED this 28 day of April 2022



Live Music Act 2012

2012 CHAPTER 2

An Act to amend the Licensing Act 2003 with respect to the performance of live music entertainment; and for connected purposes. [8th March 2012]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Licence review for live music entertainment

(1) In section 177 of the Licensing Act 2003 (dancing and live music in certain small premises)—

- (a) in subsections (1) and (2), for “the provision of music entertainment” in each place substitute “ dancing ”,
- (b) in subsection (2) omit—
 - (i) paragraph (b) and “and” immediately before it, and
 - (ii) in the words following paragraph (b), the words “, in relation to the provision of that entertainment,”,
- (c) omit subsections (3) and (4),
- (d) in subsection (8)—
 - (i) for “music entertainment” substitute “ dancing ” and in paragraph (a) of that definition omit “(e) or”, and
 - (ii) omit paragraph (b) of that definition and “or” immediately before it, and
- (e) in the heading omit “and live music”.

(2) After that section insert—

Changes to legislation: There are currently no known outstanding effects for the Live Music Act 2012. (See end of Document for details)

“177A Licence review for live music

- (1) Subsection (2) applies where live music takes place on premises authorised to be used for the supply of alcohol for consumption on the premises by a premises licence or club premises certificate, and—
 - (a) at the time of the live music, the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises,
 - (b) either—
 - (i) the live music is unamplified, or
 - (ii) the live music is amplified and takes place in the presence of an audience of no more than 200 persons, and
 - (c) the live music takes place between 8am and 11pm on the same day (or, where an order under section 172 has effect, between the hours specified in that order).
- (2) Any condition of the premises licence or club premises certificate which relates to live music does not have effect in relation to the live music, unless it falls within subsection (3) or is added to the licence in accordance with subsection (4).
- (3) A condition falls within this subsection if, on a review of the premises licence or club premises certificate it is altered so as to include a statement that this section does not apply to it.
- (4) On a review of a premises licence or club premises certificate a licensing authority may (without prejudice to any other steps available to it under this Act) add a condition relating to live music as if—
 - (a) the live music were regulated entertainment, and
 - (b) the licence or certificate licensed the live music.
- (5) In this section—

“condition” means a condition—

 - (a) included in a premises licence by virtue of section 18(2)(a) or (3)(b), 35(3)(b), 52(3) or 167(5)(b),
 - (b) included in a club premises certificate by virtue of section 72(2)(a) or (3)(b), 85(3)(b) or 88(3),
 - (c) added to a premises licence by virtue of its inclusion in an application to vary the licence in accordance with section 34 or 41A which is granted under section 35(2) or 41B(3) (as the case may be), or
 - (d) added to a club premises certificate by virtue of its inclusion in an application to vary the certificate in accordance with section 84 or 86A which is granted under section 85(2) or 86B(3) (as the case may be);

“live music” means entertainment of a description falling within, or of a similar description to that falling within, paragraph 2(1)(e) of Schedule 1;

“supply of alcohol” means—

 - (a) the sale by retail of alcohol, or

Changes to legislation: There are currently no known outstanding effects for the Live Music Act 2012. (See end of Document for details)

- (b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.”

Commencement Information

II S. 1 in force at 1.10.2012 by S.I. 2012/2115, art. 2

2 Removal of requirement to license the provision of entertainment facilities

(1) Schedule 1 to the Licensing Act 2003 (c. 17) is amended as follows.

(2) For paragraph 1(1) substitute—

“(1) For the purposes of this Act, the “provision of regulated entertainment” means the provision of entertainment of a description falling within paragraph 2 where the conditions in sub-paragraphs (2) and (3) are satisfied.”

(3) In paragraph 1(2) omit “, or entertainment facilities are.”.

(4) For paragraph 1(3) substitute—

“(3) The second condition is that the premises on which the entertainment is provided are made available for the purpose, or for purposes which include the purpose, of enabling the entertainment concerned to take place.”

(5) For paragraph 1(4) substitute—

“(4) For the purposes of sub-paragraph (2)(c), entertainment is to be regarded as provided for consideration only if a charge—

- (a) is made by or on behalf of any person concerned in the organisation or management of that entertainment, and
- (b) is paid by or on behalf of some or all of the persons for whom that entertainment is provided.”

(6) In paragraph 1(6) omit paragraph (c).

(7) Omit paragraph 3.

(8) For paragraph 4 substitute—

“4
The Secretary of State may by order amend this Schedule for the purposes of modifying the descriptions of entertainment specified in paragraph 2, and for this purpose “modify” includes adding, varying or removing any description.”

(9) For paragraph 7 substitute—

“7
The provision of entertainment consisting of the performance of live music or the playing of recorded music is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it is incidental to some other activity which is not itself a description of entertainment falling within paragraph 2.”

(10) In paragraph 8 omit “or entertainment facilities”.

Changes to legislation: There are currently no known outstanding effects for the Live Music Act 2012. (See end of Document for details)

- (11) In paragraph 9 omit “or entertainment facilities”.
- (12) In paragraph 10(1) omit “or entertainment facilities”.
- (13) In paragraph 11—
 - (a) omit “or entertainment facilities”, and
 - (b) omit sub-paragraph (b).
- (14) In paragraph 11A omit sub-paragraph (4).
- (15) In paragraph 12 omit “or entertainment facilities”.

Commencement Information

I2 S. 2 in force at 1.10.2012 by S.I. 2012/2115, art. 2

3 Exemptions for live music entertainment

- (1) Schedule 1 to the Licensing Act 2003 (c. 17) is amended as follows.
- (2) In paragraph 11(a) for “a performance of unamplified, live music as” substitute “ the playing of live or recorded music that forms ”.
- (3) After paragraph 12 insert—

12A “Live music in licensed venues

The provision of entertainment consisting of a performance of live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act on premises authorised to be used for the supply of alcohol for consumption on the premises by a premises licence or club premises certificate, if—

- (a) the requirements of section 177A(1)(a) to (c) are satisfied, and
- (b) conditions have not been included in the licence or certificate by virtue of section 177A(3) or (4).”

- (4) After paragraph 12A (as inserted by sub-paragraph (3)) insert—

12B “Live music in workplaces

The provision of entertainment consisting of a performance of live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act, provided that—

- (a) the place where the performance is provided is not licensed under this Act (or is so licensed only for the provision of late night refreshment) but is a workplace as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992,
- (b) the performance takes place in the presence of an audience of no more than 200 persons, and
- (c) the performance takes place between 8am and 11pm on the same day.”

- (5) After paragraph 12B (as inserted by sub-paragraph (4)) insert—

Changes to legislation: There are currently no known outstanding effects for the Live Music Act 2012. (See end of Document for details)

12C “Live unamplified music

The provision of entertainment consisting of a performance of live music is not (subject to section 177A(3) and (4)) to be regarded as the provision of regulated entertainment for the purposes of this Act provided that the music—

- (a) is unamplified; and
- (b) takes place between 8am and 11pm on the same day.”

Commencement Information

I3 [S. 3](#) in force at 1.10.2012 by [S.I. 2012/2115](#), [art. 2](#)

4 Short title, commencement and extent

- (1) This Act may be cited as the Live Music Act 2012.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to England and Wales only.

Commencement Information

I4 [S. 4](#) in force at 1.10.2012 by [S.I. 2012/2115](#), [art. 2](#)

Changes to legislation:

There are currently no known outstanding effects for the Live Music Act 2012.

Premises	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Hollybush Off Licence and Convenience store	06:30	06:30	06:30	06:30	06:30	09:00	09:00
252 Penn Road	00:00:00	00:00:00	00:00:00	00:00:00	00:00:00	00:00:00	00:00:00
Bradmore News Off Licence	07:00	07:00	07:00	07:00	07:00	07:00	07:30
Parkfield Off Licence	08:00	08:00	08:00	08:00	08:00	08:00	08:00
Supershop Off Licence	07:00	07:00	07:00	07:00	07:00	08:00	08:00
Smoke & Wine Store Lifestyle Express	06:00	06:00	06:00	06:00	06:00	07:00	08:00

This page is intentionally left blank

School	Distance (miles)
Penn Hall School	0.3
Springdale Primary School	0.6
St Bartholomew's Primary School	0.5
The Mast 4 Within Warstones Primary School	0.4
Highfields School	1
Warstones Primary School	1.2

This page is intentionally left blank