

Statutory Licensing Sub-Committee

Minutes - 29 April 2022

Attendance

Members of the Statutory Licensing Sub-Committee

Cllr Phil Page (Chair)

Cllr Keith Inston

Cllr Wendy Dalton

Premises Licence Holder

Leigh Schelvis

Solicitor

Daniel Doherty

Designated Premises Supervisor

Chris Mellins

Marston's Area Manager

Responsible Authorities

Rita Braham

Environmental Health

Other Persons

Cllr Celia Hibbert

John Greatrex

Employees

Anita Chonk

Senior Licensing & Compliance Officer

Donna Cope

Democratic Services Officer

Jas Kaur

Democratic Services Manager

Sarah Hardwick

Senior Solicitor

Observers

Cllr Rashpal Kaur

Emma Waites

Environmental Health

Item No. *Title*

1 Apologies for absence

Apologies were received from Greg Bickerdike, Licensing Authority.

2 Declarations of interest

There were no declarations of interest.

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

An application for a variation of a Premises License in respect of The Hollybush, 494 Penn Road, Wolverhampton, WV4 4HU was considered following representations made from the Licensing Authority, Environmental Health and Other Persons.

The Chair welcomed all parties to the hearing and invited all those present to introduce themselves. All parties did so. He outlined the procedure to be followed and all parties confirmed that they understood the procedure.

Anita Chonk, Senior Licensing and Compliance Officer provided an outline of the application. Leigh Schelvis, Solicitor representing the Applicant, confirmed that the summary was accurate.

The Chair invited the Applicant to present their application.

Mr Schelvis, Solicitor representing the Applicant, requested to play a video, but as all parties did not agree, the request was refused.

Mr Schelvis outlined the application as per Appendix 1 of the report and stated the following:

- The earlier terminal hour had been requested by residents and patrons so that the premises could hold private events.
- Several conditions on the licence were outdated, duplicated or contradictory and therefore should be removed.
- Terms had been agreed between the Applicant and the Licensing Authority as Responsible Authority.
- Environmental Health had concerns about noise, but the applicant had made proposals to control this.
- No other Responsible Authorities had objected to the application.
- 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 were no longer deemed to be regulated activities provided music took place on premises authorised by a premises licence which was used for the supply of alcohol for consumption on the premises, if the music was amplified, it took place in the presence of an audience of no more than 500 persons, and the music took place between 8am and 11pm on the same day. Therefore, under general law, Live and

Recorded Music were no longer deemed to be regulated activities under the LA 2003 for this premises.

- There would not be issues with nuisance, safeguarding or anti-social behaviour and there was no evidence to suggest otherwise.

The Chair afforded all parties present the opportunity to question Mr Schelvis and his client in relation to his submission. Mr Schelvis and his client responded to questions asked.

The Chair invited Environmental Health to make representations. Rita Braham, Senior Environmental Officer, did so as per Appendix 5 of the report. She acknowledged the change in music regulations but still had concerns regarding noise nuisance for nearby residents.

The Chair afforded all parties present the opportunity to question the Environmental Health in relation to its submission. Rita Braham responded to questions asked.

The Chair invited Other Persons to make representations. Councillor Celia Hibbert did so as per Appendix 6 of the report. She stated that the by granting the application the Licensing Objectives would be compromised and it would set an example to other nearby premises.

The Chair invited all parties present to question Councillor Hibbert in relation to her submission. Councillor Hibbert responded to questions asked.

The Chair invited Other Persons to make representations. John Greatrex did so as per Appendix 7 of the report. He stated that the additional hours would cause further disturbance and the premises should utilise Temporary Event Notices instead.

The Chair invited all parties present to question Mr Greatrex in relation to his submission. Mr Greatrex responded to questions asked.

The Chair invited all parties present to make their final address.

Mr Greatrex, Councillor Hibbert, Rita Braham and Mr Schelvis made a final statement.

Sarah Hardwick, Senior Solicitor sought clarification on the conditions proposed by the Licensing Authority and Environmental Health and provided legal guidance to Members.

Councillor Page, Councillor Dalton, Councillor Inston, the Senior Solicitor and Democratic Services Officer, withdrew from the meeting to enable the Sub-Committee to determine the matter.

The Sub-Committee adjourned at 12.35 hours.

The Hearing reconvened at 13.50 hours.

Councillor Page, Councillor Dalton, Councillor Inston, the Senior Solicitor and Democratic Services Officer re-joined the meeting.

The Chair advised all parties of the decision of the Sub-Committee, which was read out by the Senior Solicitor.

Resolved:

The Sub-Committee had taken note of all the written concerns raised in respect of the application for the variation of the premises license in respect of The Holly Bush, 494 Penn Road, Wolverhampton, WV4 4HU. It listened to the arguments of those who had spoken at the hearing, both for and against the application.

The application was to extend the current licensable hours for the sale of alcohol on and off the premises, and to remove and amend conditions.

The Licensing Sub Committee (LSC) had considered written submissions and heard from the applicant and his legal representative that:

- They were applying to vary hours for sale of alcohol and opening time at the start of the day. They also wished to remove/amend conditions on the licence which are outdated, duplicated or contradictory.
- The earlier terminal hour had been requested by residents and patrons so that the premises could hold private events and conditions were offered to control this.
- Terms had been agreed between the Applicant and the Licensing Authority as Responsible Authority and these could be seen on pages 3 and 4 of the Supplemental Agenda. It was proposed that the operating schedule within the application dated 8 March 2022 be modified to reflect this with the agreed conditions replacing those on the application that are to be varied, with one exception. The condition stating *Alcohol shall not be consumed in the patio area after 23:00, as detailed on the application, will apply to the licence.*
- Environmental health as Responsible Authority had made representations that no music should be played in the outdoor area after 21:00. The Licensing Sub Committee should consider the extent to which amplified sound could be controlled by them in this instance. 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 provided music takes place on premises authorised by a premises licence which is used for the supply of alcohol for consumption on the premises, if the music is amplified, it takes place in the presence of an audience of no more than 500 persons and the music takes place between 8am and 11pm on the same day. Therefore, under general law Live and Recorded Music are no longer deemed to be regulated activities under the LA 2003 in the circumstances outlined. There has only been one complaint made about music disturbance. The applicant has made a proposal to help control any noise disturbance 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

Guidance under s182 of LA 2003 directs conditions imposed upon a licence must be enforceable, should not duplicate other statutory requirements, should be proportionate, justifiable and be capable of being met and should not be *standardised*.

Additional conditions to address concerns of Environmental Health have been proposed and appear at page 5 of the Supplemental Agenda Pack. The premises submit that Condition 1 should read music until 23:00 not 21:00.

- There was no evidence that the Applicant intends to operate inappropriately or inconsiderately.
- No representations had been received from the Police or other Responsible Authorities. Guidance under s182 suggests that each responsible authority should be the expert in their respective field.
- Other persons had made relevant representations. Representations from other persons must be relevant and not frivolous or vexatious. There would not be issues with nuisance, safeguarding or anti- social behaviour.

The Licensing Authority as Responsible Authority were not in attendance at the hearing however, the Licensing Sub Committee had considered written submissions made by them that:

- They make relevant representations in respect of this application under all the Licensing Objectives.
- There was insufficient information within the operating schedule to show how the applicant will further the licensing objectives.
- Terms have been agreed between the Applicant and the Licensing Authority as Responsible Authority and it is proposed that the operating schedule within the application dated 8 March 2022 be modified to reflect this.

The Licensing Sub Committee heard from and considered written submissions made by Environmental Health as Responsible Authority that:

- They make relevant representations in respect of this application under the Licensing Objective Prevention of Public Nuisance.
- The representation relates to the applicant's wish to vary the condition relating to outdoor music from 21:00 to 23:00, due to the close proximity to residential properties and the nuisance that could be caused.
- The premises could apply for a TEN for occasional events.
- From the proposed conditions at page 5 of the Supplemental Agenda Environmental Health submit that Condition 1 should read music until 21:00 not 23:00. These conditions, if added to the licence, would replace conditions to be varied on the application under the heading the Prevention of Public Nuisance

Relevant representations had been received from other persons. Those attending have confirmed the following both by way of written submissions and orally today:

- Cllr Hibbert has confirmed that she has received objections. That she agrees with the residents that the variation should not be granted. That 08:30 is too earlier to sell alcohol. That this is a residential area and opening early will result in nuisance for local residents and antisocial behaviour will be experienced.
- A resident local to the premises has made a relevant representation and confirmed there have been incremental changes to the licence over a period of time to include an increase in the opening hours and area licensed together with the addition and variation of conditions more particularly in relation to the closure and sale of alcohol from the patio/garden. That the outside sound system can frequently be heard at times close to midnight. That the current application requests additional hours of opening that will cause disturbance from potential patrons. That the premises are situated in a residential area and any change will cause additional noise. That they are therefore opposed to the application being granted.

The Licensing Sub Committee have not considered matters that are not relevant to this application to include staffing levels, religious considerations, local nurseries and elections. It is also accepted that each case is decided upon its own merits.

The jurisdiction of the Licensing Sub Committee is limited to considerations relating to licensable activities only.

Based on evidence presented and terms offered, the Licensing Sub Committee are satisfied that this application as applied for, but with conditions proposed by the Licensing Authority and Environmental Health, will not undermine further any of the Licensing Objectives.

Based upon the above and in accordance with Section 35 of the LA 2003 the Sub Committee has decided that the application to vary the premises licence should be granted, as applied for but subject to modification of the application as proposed.

That being:

- Conditions identified on the application to be varied (page 18 and 19 of the agenda pack) are to be replaced by conditions agreed between the Licensing Authority as Responsible Authority and the applicant detailed at pages 3 and 4 of the Supplemental Agenda with one exception. The following proposed varied condition, detailed on the application, will apply to the licence and read:

Alcohol shall not be consumed in the patio area after 23:00

- Conditions identified on the application to be varied (page 18 and 19 of the agenda pack) relating to Prevention of Public Nuisance shall be replaced by conditions proposed on page 5 of the Supplemental Agenda with one amendment to read as follows:

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

The varied conditions of licence will therefore read:

- *Alcohol shall not be consumed in the patio area after 23:00*

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.

The Prevention of Public Nuisance

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

- 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

It is considered that the above decision is in support of all the licensing objectives.

Written confirmation of the Sub Committee's decision will be forwarded forthwith.

All parties have a right of appeal to the Magistrates Court within 21 days of receipt of this decision.