

## **LICENSING SUB COMMITTEE**

**Meeting held in the Council Chamber, Council Offices, Urban Road, Kirkby-in-Ashfield,**

**on Friday, 22nd February, 2019 at 10.00 am**

**Present:** Councillor Sam Wilson in the Chair;  
Councillors David Griffiths and Cathy Mason.

**Officers Present:** Julian Alison, Lynn Cain and Hannah Cash.

**In Attendance:** Mr. David Fewster (Premise Licence Holder).  
Mr. Paul Oldnall (in support of the Premise Licence Holder).  
Mrs. Amanda Stevenson (Review Applicant).

### **LSC.6 Declarations of Disclosable Pecuniary or Personal Interests and Non Disclosable Pecuniary/Other Interests**

No declarations of interest were made.

### **LSC.7 Hearing for Review of a Premises Licence: The Dog House at Hucknall, 2 Yorke Street, Hucknall**

The Chairman introduced himself and asked the Committee Members, Officers and those parties present to introduce themselves.

In attendance were Mr. David Fewster (Premise Licence Holder) and Mr. Paul Oldnall (in support of the Premise Licence Holder) and Mrs. Amanda Stevenson (Review Applicant).

The Chairman explained the procedure to be adopted throughout the duration of the hearing.

The Licensing Team Leader then proceeded to outline the application for review of a premises licence.

The Chairman then invited the Review Applicant, Mrs. Amanda Stevenson to put forward her concerns in relation to the running of the licenced premises to the Sub Committee. Following this and in accordance with adopted procedure, the Premise Licence Holder, the Sub Committee Members and the Legal Officer were offered the opportunity to ask questions of the Review Applicant for the purposes of lucidity and further explanation.

The Premise Licence Holder was then invited to put forward to the Sub Committee his response to the concerns raised by the Review Applicant.

Following this and in accordance with adopted procedure the Review Applicant, the Sub Committee Members and the Legal Officer were offered the opportunity to ask questions of the Premise Licence Holder for the purposes of lucidity and further explanation.

At this point in the proceedings the Review Applicant requested that a noise recording be listened to by all present at the hearing and submitted as further evidence for the review. Having been put to all parties it was agreed that submission of the recording evidence would be acceptable. All present at the meeting then proceeded to listen to the evidence presented.

Finally, the Chairman invited the Review Applicants and Premise Licence Holder to sum up their respective cases.

The Chairman and Members of the Sub Committee then withdrew from the hearing in order to deliberate upon the review application and representations made in respect of it.

The hearing was adjourned at 10.55 a.m.

The Chairman and the Sub Committee Members subsequently returned to the room and the hearing was reconvened at 11.20 a.m.

The Legal Officer delivered the Sub Committee's findings, the decision and the reasons as follows:-

The Sub Committee had taken into account the evidence put before it at the hearing and also taken into account the contents of the application and written representations.

### **Decision**

RESOLVED

that the decision of the Licensing Sub Committee (in exercise of its powers delegated by Ashfield District Council as Licensing Authority) is to permanently modify the conditions of the licence/certificate by adding the following conditions:

- a) the cigarette receptacles provided for customers shall be moved and relocated on the Yorke Street side of the premises;
- b) from 31<sup>st</sup> May, 2019, windows fitted to the premises that open on to West Street shall be closed from 19:00 hours each day;
- c) a soft closing system shall be fitted to the main entrance door, and the door shall not be left open at any time, save for immediate entrance and egress.

### **Facts**

The Panel carefully considered all of the information provided in the Application and the two representations, and the submissions made by both parties at the hearing. The Panel also took in to account the District's Licensing Policy, the guidance issued by the Secretary of State under s182 of

the Licensing Act 2003 (the 'Statutory Guidance') and the four licensing objectives, namely:

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from Harm

**The Sub Committee found the following facts:**

1. The Premises are situated in a residential area and are close to residential properties, particularly that of the Applicant;
2. Noise emanating from the Premises is capable of undermining the licensing objective of the Prevention of Public Nuisance, particularly later at night;
3. The noise complained of by the Applicant is from inside the Premises and also from patrons standing outside;
4. There was no evidence that the licensing objectives of the Prevention of Crime and Disorder; Public Safety and the Protection of Children from Harm are being undermined, despite reference to them in the Application and in one representation.
5. No representations were received from Responsible Authorities.
6. The Sub Committee found that, on the evidence presented, the addition of the two conditions above to the Premises Licence was a reasonable and proportionate means to limit the effect of noise from the Premises on nearby residents, thereby promoting the Licensing objective of the Prevention of Public Nuisance.

**Reasons**

1. The Sub Committee considered whether, and accepted that, routine noise emanating from the Premises is capable of causing a degree of public nuisance, in particular to the Applicant and those living in close proximity to the Premises.

The Sub Committee noted that the Council's Environmental Health Department investigated the Premises and did not make a finding of statutory noise nuisance. They took in to account the Statutory guidance, which 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 circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.*

2. The Sub Committee considered the issue raised in the Application of cars mounting and parking on the pavement and the concerns around public safety however, they did not consider that this was within the control of the Premises. Behaviour taking place beyond the immediate area surrounding the premises is the responsibility of the individual.
3. The Sub Committee noted that the Applicant had reported the issues with noise to the Police and that the Council's Environmental Health and Planning Departments had been involved. They were disappointed that none of them had considered it appropriate to comment in their role as Responsible Authorities. This left the Sub Committee with no independent evidence to base their decision on having only the information provided by the Applicant and on behalf of the Premises.

The Sub Committee found all parties at the hearing to be credible and did not doubt any information put forward however, it recognised the parties' competing objectives and felt that information from Responsible Authorities would have aided the decision making process. The Panel was grateful to the Respondents for allowing a noise recording taken by the Applicant to be played at the hearing. Ultimately, they did not take the recording in to consideration when making their decision as it did not record the level of noise and therefore they felt it could not be relied on to be an accurate indicator of the level of noise from the Premises.

4. When considering the Application, the Sub Committee particularly took in to account the nature of the area within which the Premises are situated (Policy 2 of the Council's Statement of Licensing Policy). It recognised that, due to the close proximity of the Premises to residential properties, routine noise from the Premises and its patrons could cause a public nuisance particularly at night.
5. The Sub Committee accepted that measures have been taken to mitigate noise at the Premises including the Premises being soundproofed and having windows on the Yorke Street side that do not open. The Sub Committee felt that the soundproofing was likely to lead to sound being funnelled through open windows on West Street, which would particularly affect the residential properties there.

When considering what action to take the Authority should seek to establish the causes of the concerns raised in the representations and direct the remedial action at those concerns. The action taken should generally be directed at these causes and should always be no more than is appropriate and proportionate to address the concerns.

The Sub Committee felt that it was possible to address this concern by imposing a new condition on the Licence that any windows on the West Street side of the Premises must be closed after 19:00 hours, and that a soft close system must be installed on the entrance door to ensure that it is kept closed other than when people are entering or leaving the Premises. A period of approximately 3 months is being given before this condition takes effect to allow time for air conditioning to be installed as the Sub Committee recognises that this condition will mean that there are no windows in the Premises that can be opened after 19:00 hours.

6. The Sub Committee felt that the noise issue was compounded by the designated area for smoking being outside of the entrance door on West Street. They noted the measures already in place, including a shelf for drinks and signs requesting drinks not be taken outside, however they felt that whilst these measures might discourage people from lingering outside they did not prevent them causing noise when out there.

They therefore felt that a condition requiring any smoking receptacles to be moved to Yorke Street would be an appropriate way of addressing this issue and reducing the amount of noise affecting the residents of West Street. This condition will take effect immediately.

### **Appeal**

The parties to the hearing were reminded that there was a right to appeal against the decision to the Mansfield Magistrates Court, Rosemary Street, Mansfield, Nottinghamshire, exercisable within 21 days from the date of notification of the Licensing Authority's decision.

The meeting closed at 11.36 am

Chairman.