

MINUTES of a meeting of the LICENSING SUB COMMITTEE held in the Council Offices, Coalville on MONDAY, 30 JANUARY 2023 at 11.15 am.

Present: Councillors E G C Allman, A C Saffell and J G Simmons.

Officers: Ms K Woollett, Mr P Dennis, Ms R Haynes, Mr A Cooper, Ms M Wainwright, Mr J Cross and Mrs R Wallace.

For the Applicant : Mr T Olaf.

For the Licensee: Mr C Griffin, Mr T Griffin.

Interested Parties: Mr A Wileman, Ms E Hill, Councillor J Bridges.

1 ELECTION OF CHAIRMAN

By affirmation of the meeting it was

RESOLVED THAT:

Councillor A C Saffell take the chair for the remainder of the meeting.

2 APOLOGIES FOR ABSENCE

Councillor E Allman gave apologies and Councillor D Everitt attended as reserve member.

3 DECLARATION OF INTERESTS

No interests were declared.

4 APPLICATION FOR THE REVIEW OF A PREMISES LICENCE

It was agreed that time allowed for representations would be limited to 15 minutes.

The Licensing Officer presented his report and there were no questions.

The Environmental Protection Officer was invited to make his representation and outlined concerns around the licensing objective of causing a public nuisance being undermined. Concerns were expressed toward the level of noise which had been within very close proximity to residential properties in a 50m radius but some of which were as close as 7.5m away. A second concern regarding the fabric of the building and its ability to contain amplified music was raised, it was noted that the building had a lot of glass, which would not be a good insulator of sound.

The Environmental Protection Officer stated that he had put in a representation to the licence application which raised these concerns and had also highlighted measures which could be implemented to mitigate potential problems. He stated he had approached the licence holder and at that time, the licence holder had been agreeable to these conditions but had later changed his mind. At the hearing, the licence was granted without the noise control measures, and it had been implied that the establishment would operate as a high end bistro and that music would not be the one of the main attractions.

The Environmental Protection Officer reported that after the licence was granted, Environmental Health began to receive noise complaints relating to the volume of indoor and outdoor music and of raised voices outside. Environmental Health carried out a series of visits to investigate these complaints and noted that even with doors and windows

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closed, the music was very loud and that there were speakers outside the premises. Whilst undertaking these visits, the Environmental Protection Officer reported that he was approached by the licence holder who stated that he thought, the Environmental Protection Officer, was “selling drugs”.

The Environmental Protection Officer stated that no application had been made to vary the licence and complaints were still being received, so he installed noise monitoring equipment in a neighbouring residential property which had provided evidence of noise. Evidence was also collected from Eden Bistro’s own Facebook page which indicated that it was not only a high end bistro as had been implied at the initial application. The videos showed an entertainer outside with a microphone and amplified speakers.

Following the representation of the applicant, questions were invited and the licence holder wished to enquire whether the 50m radius included the other local pub, The Rawdon Arms. Officers responded that it did, however on the occasions on which he had visited, the only noise was coming from the Eden Bistro.

The licensing solicitor asked for clarity on whether the proposed conditions related to live or recorded amplified music and officers responded that amplification did not matter and that, for example, live music with a guitar but no amplifier would still not be acceptable. This would also include background music in order to fully satisfy Environmental Health that no public nuisance would be caused. It was noted that the licence holder was offered a noise limiter however that this had been declined.

The licence holder wished to know whether Environmental Health had approached the premises to let them know complaints had been received and officers responded that letters had indeed been sent out to notify the premises of the complaints. It was asked whether other premises in the locality had been making noise and officers replied that only complaints had been received pertaining to the noise from Eden Bistro. Officers confirmed while there would be the potential for other premises in the local area to cause a noise nuisance, there had been no complaints or evidence recorded of these premises doing so.

The licence holder was invited to make his representation and admitted that initially he had “got it wrong” when the business had first started, had only become aware of complaints through third party reports and had been unaware of environmental protection laws.

He asserted that there had been very few complaints since the Environmental Protection Officer had spoken to him and denied making an agreement to apply to change the licence. He also asserted that there had been few complaints until the May Bank Holiday during which time the business had been celebrating its first anniversary of trading and the events which had been carried out in celebration had been covered by a Temporary Events Notice.

The licence holder stated that 50 people supported his representation. He accepted that the venue was unsuitable to hold outdoor events except for Bank Holiday weekends. He also noted that other local venues held outdoor events and felt that to some extent, Eden Bistro was blamed for the noise which had emanated from these events. The licence holder felt that curtailing outdoor activities to a 9pm finish would prove to be highly detrimental to the business, which had reportedly made a £32,000 loss in its first year, and strongly objected to this suggestion.

The licence holder asserted that the complaints had been the result of a personal vendetta against him and that he had invited people to speak to him if they wished to complain. He claimed that the premises had been upholding the licensing objectives and was happy to not play live, amplified music outside. With regard to a panel members

question about where customers are required to go when they wish to smoke, the licence holder advised that there is no smoking allowed on the premises.

The licensing solicitor asked the Environmental Protection Officer if the noise recording equipment was able to pinpoint where noise was coming from and was advised that the person whose property the monitoring equipment was installed at confirmed where the noise was from and had also completed a log sheet which correlated with the noise complaints received regarding the Eden Bistro.

It was asked whether ambient music would have the same level of amplification and the licence holder advised that he would define ambient music as that which it would be possible to hold a conversation over whilst eating a meal.

The licence holder asserted that they had not had sufficient time to view the videos which had been sent on the previous Friday afternoon, however it was noted that these videos had been taken from the establishments own Facebook pages.

A member enquired how it would be proposed to prevent customers from creating a noise nuisance and the licence holder advised that staff are trained in order to calm and quiet customers and also wished to note that there had been no violence on the premises and that there was a zero tolerance approach to antisocial behaviour.

The Environmental Protection Officer asked the licence holder how he proposed to ensure the ambient music would be set to remain within the premises and the licence holder replied that should he receive complaints, he would turn it down. Officers felt that this would not be acceptable as it would place the onus on local residents to have to keep complaining and suggested that the installation of a noise monitoring equipment.

It was clarified by officers that the 9pm outdoor space curfew was suggested as this is a time local residents could expect to go to bed.

Councillor John Bridges was invited to make his representation and asserted that 87% of the area's economy was driven by tourism and that Eden Bistro had been a positive factor in attracting money into the local economy. Councillor Bridges raised concerns about how the noise had been recorded and asserted that he was aware that there had been some level of noise created from outdoor events held at Conkers. A discussion was had around when the last complaint had been received, as it was asserted that this was some time ago, however officers noted that the pattern of complaints had been seasonal, at times when the weather had been sufficiently clement enough to hold outdoor events and ran approximately from the end of March to the end of the summer. Councillor Bridges stated that he would hope to see a dialogue encouraged between all parties in the hope of reaching a resolution which would be satisfactory to all.

In response to Councillor Bridges assertion that the noise had not been recorded correctly, the Environmental Protection Officer clarified that he had not been undertaking a noise survey and had carried out observations which provided evidence that there had been public nuisance due to the level of noise from Eden Bistro and asserted that this would have significant impact on local residents enjoyment of their own home. Factors such as not being able to have windows open on a hot day, effect on sleep and noise being heard over normal conversation had been considered.

Ellen Hill, a local resident, was invited to give her representation. Ms Hill had submitted a representation about the negative impact the noise nuisance had caused her and stated that she had kept a log of all of the occasions when this had happened. Ms Hill disputed that the noise was emanating from other nearby premises and conceded that although the Rawdon Arms hold an outdoor festival, that this is only once a year and that it ends at around 6pm or 7pm. Ms Hill admitted that she was able to hear noise from Conkers but

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that this was very infrequent and went on to say that the noise from Eden Bistro had been played at such a volume that she had been unable to enjoy her own house or garden, or to hear her own music. Ms Hill stated that she had telephoned the Bistro to complain about the noise levels but that staff had hung up on her. Ms Hill stated that the noise from the Bistro had “ruined” the last two summers and other aggravating factors had been from Bistro customers standing outside the premises smoking and shouting. Ms Hill stated that this issue had had a detrimental effect on her mental health.

Andrew Wileman, a local resident, was invited to make his representation and stated that residents had been fully aware of where the noise was coming from and cited that he felt “there’s no escape from the noise in their own [the residents’] home”.

Final statements were invited and Andy Cooper, Licensing Team Leader wished to draw attention to the fact that a Temporary Events Notice would require conditions attached to the premises licence.

All parties were invited to sum up. The Environmental Protection Officer stated that the licence at stake was in conflict with the prevention of public nuisance and although the licence holder had acted within the licence issued, this was in conflict with the licensing objective. The officer made a plea to the panel to bear in mind local residents, who included elderly and vulnerable people, when reaching their decision.

The hearing was adjourned at 13:08 while the panel adjourned to deliberate.

At 14:27 the hearing reconvened and the licensing solicitor delivered the decision notice.

It was confirmed that the panel had been satisfied that the premises had caused noise nuisance to the surrounding residential properties and had therefore undermined the licensing objective of preventing public nuisance.

Being satisfied of such, the Sub-Committee turned its attention to conditions that could appropriately manage or mitigate the nuisance.

The Environmental Protection Officer suggested the following conditions:

1. There shall be no live, recorded music played outdoors.
2. All other licensable activities outdoors must cease at 21:00 hours daily except for access and egress. All tables and chairs in the outdoor area must not be used after 21:00 hour daily.
3. All external doors / windows must be kept closed, other than for access and egress, in all rooms when events involving amplified music or speech are taking place.
Note to Premises Licence Holder: You may need to consider providing ventilation or air conditioning in warm weather.
4. Prominent, clear notices shall be displayed at all exits / in the beer garden requesting customers and staff respect the needs of nearby residents by keeping noise to a minimum when using the outside area and when leaving the premises. All such signs must be in a permanent form, prominently placed and be legible.
5. Disposal of waste bottles into external receptacles where the noise will be audible to neighbouring properties must not occur between 21:30 hours and 07:30 hours.

In relation to condition 1, the Environmental Protection Officer confirmed that this should read “There shall be no live AND recorded music played outdoors.”

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However, the Sub-Committee was of the view that it should read "There shall be no music (live, live/recorded or recorded music) played outdoors."

The Licence Holder confirmed that he did not object to this condition, however, he did still want to be able to play ambient music outdoors.

The Sub-Committee agreed with the Environmental Protection Officer that there should be a noise limiting device installed and that ambient music should not exceed a level on this device, that level to be agreed with the Council's Environmental Protection Team.

To further ensure the licensing objective of preventing public nuisance was not undermined, the Sub-Committee was of the view that all outside ambient music should cease at 9pm.

In terms of the second condition, the Licence Holder submitted that there should be no restriction on use of the outside patio.

However, having listened to the Environmental Protection Officer and members of the public, the Sub-Committee was satisfied that there had been noise nuisance caused by people using this outside area, for example by shouting or speaking loudly. As such, the Sub-Committee was of the view that it was necessary to impose this condition, however, the Sub-Committee was of the view that 9pm was too early, particularly in summer when it is still light outside. The Sub-Committee was of the view that it would not undermine the licensing objective of preventing public nuisance to allow use of the patio area until 10pm.

There did not appear to be any objection from any of the parties to conditions 3, 4 and 5 and in any event, the Sub-Committee was of the view that it was necessary to impose these conditions to ensure the licensing objective of preventing public nuisance was not undermined.

The meeting commenced at 11.15 am

The Chairman closed the meeting at 2.33 pm

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