

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE LICENSING SUB-COMMITTEE

TUESDAY 14TH JULY 2015 AT 6.13 P.M.

PRESENT: Councillors M. T. Buxton, B. T. Cooper and J. M. L. A. Griffiths

Observers: Councillor P. L. Thomas (Reserve Member)

Officers: Mrs. V. Brown, Mr. S. Alom and Mrs. P. Ross

Also in attendance: Ms. C. Leddington, Applicant, Mr. H. Thomas, Harrison Clark Rickerbys Solicitors, Applicant's Representative, Mrs. A. Smith, Mr. M. Howard and Mrs. Tattersall, local residents

6/15 **ELECTION OF CHAIRMAN FOR THE MEETING**

RESOLVED that Councillor B. T. Cooper be appointed Chairman of the Sub-Committee for the meeting.

The Chairman apologised to all those present for the late commencement of the meeting.

7/15 **APOLOGIES**

No apologies for absence were received.

8/15 **DECLARATIONS OF INTEREST**

No declarations of interest were received.

9/15 **APPLICATION FOR A VARIATION TO A PREMISES LICENCE IN RESPECT OF WEST ONE (HAGLEY) LIMITED, 159 WORCESTER ROAD, WEST HAGLEY, DY9 0NW**

The Sub-Committee was asked to consider an application for a variation of a premises licence in respect of West One (Hagley) Limited, 159 Worcester Road, West Hagley, DY9 0NW, submitted by Ms. C. Leddington. The application was subject to a Hearing in light of a representation received from Environmental Health Services, Worcestershire Regulatory Services and thirteen representations received from local residents objecting to the application. The basis of their representations related to:-

- The Prevention of Crime and Disorder
- The Prevention of Public Nuisance

The Technical Officer (Licensing), Worcestershire Regulatory Services (WRS) introduced the report, and in doing so, informed all those present that the variation to the application submitted by Ms. C. Leddington for West One (Hagley) Limited sought the following variations:-

- The application sought to amend the plan to include the beer garden at the rear of the premises and to include the front patio area as part of the premises licence to provide licensable activities, as per the variation application attached at Appendix 1 to the report.
- The premises was currently licensed to provide Recorded Music indoors, the applicant was seeking to amend the current licence to also provide Recorded Music outdoors until 21:30 hours.
- In addition the application sought the removal of the following conditions from the current premises licence:

“No open bottles or glasses to be allowed off the premise”

“A noise monitor is fitted in the restaurant on the first floor”

Following a query from the Chairman and Mrs. A. Smith, a local resident, on the proposed area to be included in the variation; the Council’s Legal Advisor requested that the applicant defined the front and rear area to be licensed. In response, Mr. H. Thomas, the applicant’s representative circulated to all those present a more detailed map which defined the front and rear area to be included in the variation.

The case for the applicant was then put forward by Mr. H. Thomas, Harrison Clark Rickerbys Solicitors. Mr. Thomas informed the Sub-Committee that Ms. Leddington had been the current premises licence holder for the last eight years and wanted a nice place for the community to visit. Mr. Thomas highlighted that the front patio area of the premises had been in use for over sixteen years. Ms. Leddington was led to believe that the front patio area was included in the existing premises licence. His client had included the use of this area within the variation to formalise something that had always been in use.

Mr. Thomas highlighted that after careful consideration by his client in light of all of the representations received, he and his client had discussed how best to address the concerns raised in those representations. Mr. Thomas informed the Sub-Committee that prior to the Hearing commencing, he had spoken with Ms. H. Groves, Environmental Health Officer, WRS, to address the concerns she had raised in respect of the variation application submitted. Following on from these discussions and in order for his client to address some of the concerns raised in the representations, his client had decided to amend the application to vary a premises licence as follows:-

- To vary the premises licence to include use of the front patio area and the rear beer garden for the supply of alcohol only.
- The playing of recorded music to take place indoors only (as per the existing premises licence).

- The provision of late night refreshment to take place indoors only (as per the existing premises licence).

The applicant also sought to amend the following existing conditions: -

- Annex 2 – Conditions consistent with the Operating Schedule
d) The Prevention of Public Nuisance

(12) No windows and doors to be propped open during regulated entertainment.

This to be amended to read:

(12) Save for access and egress all doors and windows to be closed during regulated entertainment.

And

(13) A noise monitor is fitted in the restaurant on the first floor

This to be amended to read:

(13) To install a noise limiting device on the first floor to be set by a qualified acoustic engineer.

The applicant sought the removal of the following existing condition:

- b) The prevention of crime and disorder

(2) No open bottles or glasses to be allowed off the premises.

Mr. Thomas further informed Members that in order to address the concerns raised by local residents and Environmental Health Services, WRS, in respect of noise nuisance; his client had recently carried out repairs at the premises to address any potential noise breakout. This had included replacing a broken side door that could not be fully closed. His client was also aware that she should keep the windows locked in order to prevent people from opening them during regulated entertainment.

To further address the issues highlighted in the representations received, his client also sought to add the following conditions to the existing licence:

- To allow customers access to the rear beer garden until 22:00 hours Monday to Saturday and 20:00 hours on Sundays, Bank Holidays and Public Holidays.
- To allow customers access to the front patio area until midnight, with the area being reduced in size by 50% at 22:00 hours. This will be monitored by either the Premises License Holder or a nominated member of staff.

- To install a noise limiting device on the ground floor to be set by a qualified acoustic engineer.

Mr. Thomas asked Members to note that no representations had been received from the police in respect of the variation application submitted. He had spoken with the local police officer for the Hagley area, who had confirmed that, after looking at historical knowledge over the last five years, the premises had not given rise to crime and disorder. Therefore Mr. Thomas requested that Sub-Committee Members disregarded any representations in respect of the Prevention of Crime and Disorder.

At the invitation of the Chairman, Mrs. A. Smith, a local resident who had submitted a representation in respect of the variation application, addressed the applicant. Mrs. Smith stated that the picture being given by the applicant's representative was that of a calm environment. But that was not the case for local residents. The television screen sited on the front patio area made the area more like a sports bar, with customers stood watching sporting events creating a lot of noise. It was not the organised environment being portrayed by the applicant. The front patio area was not just in use as a 'seasonal' area as implied by the applicant. The front patio area was used all year round including winter months when patio heaters were used. Residents were constantly being disturbed with noise nuisance from the premises.

Mr. Thomas responded and stated that the use of a television was unregulated entertainment and therefore not included under the Licensing Act 2003 and that Environmental Health, WRS had powers under the Environmental Act 1990 to deal with any noise issues deemed to be a Statutory Nuisance.

The Technical Officer (Licensing), (WRS) raised questions with regard to the decibel set up of the existing noise monitor and the installation of two new noise limiting devices. Mr. Thomas responded and stated that the noise monitor had been set at 90 decibels. One new noise limiting device had been installed and a further device would be installed by a qualified acoustic engineer. His client would take guidance from the engineer and liaise with Environmental Health Officers, WRS, in respect of the required settings.

At the invitation of the Chairman, Ms. H. Groves, Environmental Health Officer, WRS, addressed the Sub-Committee. Ms. Groves informed the Sub-Committee that, as detailed in her representation, there had been three previous investigations by WRS in respect of loud music and people noise. An investigation from May 2015 to address noise issues was still on-going. She had an open dialogue with Ms. Leddington and was working with her discussing ways to manage customer numbers and restrictions with regard to noise issues at the premises. A number of complainants lived opposite the premises on the Worcester Road. Five separate households had submitted diary sheets which had indicated problems with loud music, people shouting and chatting at the front of the premises particularly after 22.00 hours.

An officer from WRS had visited the premises on 13th June 2015, as detailed on page 61 of the report. The officer witnessed loud music breaking out from

the premises and loud customer noise at the front of the premises from 22.00 hours until after midnight. The officer noted that the double door system was not working fully, hence noise breakout. Noise was also breaking out from the function room indicating that the noise monitor was not working correctly. Ms. Groves stated that she had concerns for the potential for public nuisance due to the proposed rear beer garden. It could potentially result in moving some of the noise issues from the front to the rear of the premises, thus contributing to the existing noise issues currently affecting local residents. Ms. Groves drew Members' attention to the conditions she had suggested, as detailed on page 60 of the report. Additional conditions would ensure that Ms. Leddington managed and monitored the premises in accordance with her premises licence.

Mrs. Tattersall spoke on behalf of Pilvale Limited. She had attended the Hearing to address the noise issues residents were being subjected to. She wanted to ask the applicant some questions with regard to the noise limiting devices. What level would the noise limiting devices be set at? Would the applicant be able to determine the setting? Could the device be switched off? She was concerned that Ms. Leddington had not and was not willing to work with residents to address their concerns in respect of noise nuisance.

Members also raised questions with regard to the noise limiting devices. Would the new noise limiting devices be set to avoid any future noise breakout? Was there any potential for the noise limiting devices to be tampered with, resulting in noise breakout? Who would be responsible for monitoring and managing future noise levels?

Mr. Thomas responded and stated that the noise monitor on the first floor had in the last seven days been replaced with a noise limiting device. His client, as the person responsible for the management of the premises, would ensure future monitoring of the premises to avoid any potential noise disturbance for residents.

Ms. H. Groves, Environmental Health Officer, WRS, responded to reassure residents that a qualified engineer would advise the applicant on the required settings and that the applicant could seek further advice from Environmental Health Officers, WRS, with regard to the noise limiting devices being set accordingly.

At the invitation of the Chairman, three local residents, Mr. M. Howard, Mrs. A. Smith and Mrs. Tattersall, who had submitted representations, addressed the Sub-Committee.

Mr. Howard acknowledged that the applicant was now willing to offer specific conditions in order to address the representations submitted by local residents. He was pleased that there would be no playing of recorded music outside, but still had strong reservations about alcohol being served outside until midnight. He had, along with other residents, tried to work with Ms. Leddington but to no avail. Residents would have welcomed the opportunity to work with Ms. Leddington had she consulted with them to address their concerns. He had had to install triple glazing in his home because of the

noise issues from the premises. Residents had had to endure loud noise, glasses being broken in and around the premises, customers using bad language whilst using the outside front patio area. One resident had resorted to moving her child from the front bedroom to the rear bedroom due to the excessive noise late at night disturbing and distressing her child. He reiterated that the front patio area was not used according to the season and that patio heaters were installed so as the area could be used all year round. The applicant's proposed condition "to allow customers access to the front patio area until midnight, with the area being reduced in size by 50% at 22:00 hours", could still potentially create noise nuisance unless it was monitored accordingly. He recognised that West One (Hagley) Limited had a business to run and he had received an apology, but would like to see the premises regulated and well managed.

Mr. Thomas responded and stated that in order to address any future issues with the outside areas being used, his client Ms. Leddington had indicated that she was willing to have a dedicated staff member responsible for monitoring the outside areas.

Mrs. Smith agreed with the comments made by Mr. Howard that residents had tried to work with West One (Hagley) Limited. She also agreed that patio heaters were in use on the front patio area to enable the area to be used all year round. Speakers were used in the outside area and it was not monitored for noise nuisance. She had lived in the area since 2002 and had only experienced issues since Ms. Leddington had taken over the premises. The situation had not improved even though residents had raised their concerns with Ms. Leddington. The premises were not well managed. Residents had witnessed fights breaking out at closing time, the fights may not have involved the police, but they were unruly and a nuisance. She was not objecting to West One (Hagley) Limited operating, but concerned that Ms. Leddington had breached the conditions of her existing licence by using the front patio area and not monitoring the excessive loud noise.

Mrs. Tattersall informed the Sub-Committee that she worked part time for Pilvale Limited, which was situated next door to West One (Hagley) Limited. There was an unwritten agreement that staff at West One (Hagley) Limited had access to two parking spaces at Pilvale Limited. Mrs. Tattersall stated that broken glass was often found on their car park area on a Monday morning. During the summer months she had witnessed young children running around the car park. There was loud noise from customers drinking on the front patio area. Staff at West One (Hagley) Limited had been abusive to her when she had approached them with her concerns. She was in agreement with Mr. Howard and Mrs. Smith that Ms. Leddington was not willing to work with residents. Ms. Leddington was not adhering to the conditions of her current premises licence and would continue to do so, unless the premises were monitored.

Members expressed their concerns that the original noise monitor installed had failed to address noise issues and wanted reassurance that the noise limiting devices would be monitored in order to avoid any further noise disturbance for residents or young children. Members were mindful that Ms.

Leddington had now addressed resident's concerns by the offering of specific conditions on the variation application submitted. However, after listening to the residents, they would suggest that a complaints register be kept; whereby any future complaints with regard to noise issues could be noted to ensure they were addressed and where possible feedback provided to residents.

In response the Council's Legal Advisor, advised the Sub-Committee that the issues raised by residents had been addressed by the Hearing taking place. The issues they had raised with Environmental Health, WRS, had resulted in an officer submitting a representation to the variation application; and as stated in that representation issues from May 2015 were still under investigation. She would advise residents that should they continue to experience any further future noise disturbance to report it directly to WRS. The premises licence could then be called in for review either by residents or Environmental Health, WRS. As highlighted earlier, under the Environmental Act 1990, WRS had the powers to deal with any noise issues deemed to be a Statutory Nuisance.

In response to questions raised in respect of the protection of children from harm, both the Council's Legal Advisor and Mr. Thomas advised Members that no evidence had been provided during the course of the Hearing with regard to the protection of children from harm. The Council's Legal Advisor further advised Members that, Worcestershire County Council's, Children's Services had been consulted with on the variation application. The Technical Officer (Licensing) Officer, WRS confirmed that he received correspondence from Worcestershire County Council's, Children's Services that they had no concerns with regard to the protection of children from harm in respect of the variation application submitted by West One (Hagley) Limited. Therefore she would advise Members to disregard any representations on the basis of the protection of children from harm.

In summing up Mr. Thomas highlighted that his client had addressed the concerns raised and stated that we should not look back but look forward. Be aware of what has happened, but also look at what would be put in place to address any potential future concerns. He fully understood all of the resident's concerns expressed during the course of the Hearing, and as advised earlier by the Council's Legal Advisor, should there be any evidence of future breaches of the premises licence, both residents and Environmental Services, WRS, could call the premises licence in for review.

Having had regard to:

- The licensing objectives set out on the Licensing Act 2003
- The Council's Statement of Licensing Policy
- The guidance issued under section 182 of the Act
- The Report presented by the Technical Officer (Licensing), Worcestershire Regulatory Services (WRS)
- The written and oral representations made by Ms H. Groves, Environmental Health Officer, on behalf of Environmental Health Services, WRS, as a Responsible Authority.

- The relevant written and oral representations of other parties who had submitted objections to the application.
- The application and oral representations made at the Hearing by the Applicant's representative, Mr. Heath Thomas of Harrison Clark Rickerbys Solicitors.

The Sub-Committee has decided to grant the application to vary the Premises Licence relating to West One (Hagley) Limited, 159 Worcester Road, West Hagley, DY9 0NW. The Premises Licence was granted with the additional and amended conditions and the removal of one condition, as requested by the applicant's representative, and in agreement with the Environmental Health Officer, WRS.

The Sub-Committee was advised that the original application to vary the Premises Licence was to be amended and it was confirmed that the following variation was to be sought:

- To vary the Premises Licence to include use of the front patio area and the rear beer garden for the supply of alcohol only.
- The playing of recorded music to take place indoors only (as per the existing premises licence).
- The provision of late night refreshments to take place indoors only (as per the existing premises licence).

The applicant also sought to add the following conditions to the existing licence:

- To allow customers access to the rear beer garden until 22:00 hours Monday to Saturday and 20:00 hours on Sundays, Bank Holidays and Public Holidays.
- To allow customers access to the front patio area until midnight, with the area being reduced in size by 50% at 22:00 hours. This was to be monitored by either the Premises License Holder or a nominated member of staff.
- To install a noise limiter on the ground floor to be set by a qualified acoustic engineer.

The applicant also sought to amend the following existing conditions:

- Annex 2 – Conditions consistent with the Operating Schedule
 - d) The Prevention of Public Nuisance
 - (12) No windows and doors to be propped open during regulated entertainment.

This to be amended to read:

(12) Save for access and egress all doors and windows to be closed during regulated entertainment.

And

(13) A noise monitor is fitted in the restaurant on the first floor

This to be amended to read:

(13) To install a noise limiter on the first floor to be set by a qualified acoustic engineer.

The applicant sought the removal of the following existing condition:

b) The prevention of crime and disorder

(2) No open bottles or glasses to be allowed off the premises.

The reasons for the Sub-Committee's decision are as follows:

1. The Sub-Committee considered the submissions made by Mr. Thomas on behalf of the applicant and noted the amendments to the application to vary the premises licence which had, in part, been due to discussions with the Responsible Authority.
2. The Sub-Committee considered the representations made by the residents, and the Responsible Authority with regards to the amended application which was to extend the premises licence to allow the outside areas to be used for the supply of alcohol only. It was noted that a significant concern amongst those who raised objection was the proposal that Regulated Entertainment would be extended to those areas also. As this no longer formed part of the application the Sub-Committee was unable to attribute weight to the representations which related to that specific concern.
3. Notwithstanding the amended application the Sub-Committee considered the residents' concerns with regards to the level of noise emanating from the premises to be genuine and well founded.
4. The Sub-Committee was advised by Mr. Thomas on behalf of the applicant that the concerns with regards to the noise level had been taken seriously and that steps had recently been put in place to reduce the level of noise. This included the replacement of a side door which had previously been broken, the discovery that windows could be locked to reduce the level of noise from the function room, and also the offer to install noise limiting devices in two locations within the premises.
5. The Sub-Committee noted the comments in one of the written representations which referred to the response received when complaints were made directly to the management. This specifically states "they have

said all the right things & expressed regret, but until recently they have failed to address the problem”.

The Sub-Committee was of the view that the action now being taken by the applicant was recent and was more likely than not to be as a result of the application to vary the premises licence and with the knowledge that a number of local residents had or would wish to voice their concerns.

6. The Sub-Committee gave significant weight to the evidence of the Environmental Health Officer, Ms. Groves, who within both her written and oral representation confirmed that there were concerns with regards to the level of noise from the premises.
7. It was noted that there had been three complaints received by Worcestershire Regulatory Services. The most recent evidence of noise was, in the Sub-Committee’s opinion, very recent and in June 2015 an Environmental Health Officer witnessed loud music breaking out from the premises until after midnight.
8. The Sub-Committee noted that Ms. Groves had included as part of her representations conditions which could be considered to remedy the representation. It was of considerable note that Ms. Groves and the applicant’s representative, Mr Thomas, had discussed the noise concerns prior to the Hearing and had reached an agreement with regards to the conditions now being offered.
9. The Sub-Committee felt confident that Environmental Health officers would continue to monitor the noise concerns should further complaints be received, and were encouraged by Ms. Grove’s comments that the applicant had been “working” with her to try and resolve the concerns. The Sub-Committee would expect that continued level of co-operation.
10. When considering the conditions proposed by the applicant in agreement with Ms. Groves, the Sub-Committee was mindful of the section 182 Guidance. Such conditions must be appropriate to promote the prevention of public nuisance and should be tailored to the type, nature, and characteristics of the specific premises.
11. The Sub-Committee was advised that the front patio area had been used, with the knowledge of the Licensing Authority for many years. It had always been thought that this had formed part of the original licence and therefore the inclusion of this within the variation was formalising something that had always been in use. The Sub-Committee considered the restrictions agreed by way of the condition with regards to the reduction of this area after 22:00 hours, as appropriate to address the concerns raised regarding noise.
12. With regard to the rear beer garden, the Sub-Committee noted the time restrictions offered by way of condition and considered that this was proportionate having regards to the representations made.

13. The Sub-Committee considered the representation made by Mrs. Tattersall on behalf of Pilvale Limited. However, it appeared that the business in question was not open during the hours sought by way of the variation and therefore the Sub-Committee did not consider that this evidence was relevant to the concerns regarding the application. It was of note that, notwithstanding the concerns and the suggestion that members of staff at West One (Hagley) Limited were abusive when approached, that Pilvale Limited continued to allow West One (Hagley) Limited the use of their two parking spaces.
14. The Sub-Committee noted that other than Environmental Health no other Responsible Authorities had submitted representations.
15. In the absence of any representation from West Mercia Police, the Sub-Committee did not consider that there was sufficient evidence of crime and disorder to place restrictions on the licence in order to promote this licensing objective.
16. The Sub-Committee did not find any evidence with regards to the Protection of Children from Harm licensing objective and noted that Worcestershire County Council's, Children's Services had confirmed that they did not wish to raise an objection.
17. The Sub-Committee considered the representations and the conditions offered and concluded that the conditions were appropriate for the promotion of the licensing objectives.
18. The Sub-Committee would recommend that the applicant establishes a register whereby any complaints are noted to ensure that they can be addressed.
19. The Sub-Committee would reiterate the comments made by Mr. Thomas on behalf of the applicant, that there were very stringent sanctions that could be imposed by way of a review or by one of the other authorities that can take enforcement action should there be evidence of future problems. Residents are encouraged to contact Worcestershire Regulatory Services should they wish to seek advice or report any concerns, they can then be directed to the relevant department.

The following legal advice was given:

- That the Licensing Objectives must be the paramount consideration;
- That the Sub-Committee may only have regard to the representations which promote the four licensing objectives; and evidence relevant to those objectives.
- The Sub-Committee must consider only those matters directly relevant to the premises and must disregard reference to any matters that fall outside of the Licensing Act. Examples of such matters include, reference to

planning considerations or unregulated entertainment which would include the use of a television.

- The Sub-Committee must consider the application to vary the licence and not the original licence.
- In imposing conditions the Sub-Committee must ensure that they are appropriate for the promotion of the licensing objectives.
- If, having granted the variation, information which was evidence based was provided, then the licence as a whole could be brought before the Sub-Committee for review. Other concerns which fall outside the remit of the Licensing Authority can be dealt with through Worcestershire Regulatory Services or other agencies.

An appeal to the Magistrates' Court against the Sub-Committee's decision must be lodged within 21 days of the date on which written confirmation of the decision was received by the Applicant.

The meeting closed at 8.42 p.m.

Chairman