

Minutes of the Meeting of the LICENSING (HEARING) SUB-COMMITTEE held at the Council Chamber, Epsom Town Hall on 24 February 2023

PRESENT -

Councillor Steven McCormick (Chair); Councillors Liz Frost and Phil Neale

In Attendance: Waseem Sherwani (Licence Holder's Agent)

Officers present: Lidia Harrison (Principal Solicitor), Paul Holliday (Principal Licensing Officer) and Dan Clackson (Democratic Services Officer)

7 DECLARATIONS OF INTEREST

Review of premises licence Bay Leaves

Councillor Phil Neale, Other Interest: Councillor Phil Neale declared that he is a Ward Councillor for the ward in which the premises is located and that in the past he has eaten at the premises as a customer. He confirmed he has not been a customer of the premises within the past 18 months.

8 REVIEW OF PREMISES LICENCE BAY LEAVES

The Licensing (Hearing) Sub-Committee ("the Sub-Committee") was asked to determine an application for review of a premises licence made under the Licensing Act 2003 – for the premises known as Bay Leaves, 364 Kingston Road, Ewell, KT19 0DT.

The Principal Licensing Officer introduced the report.

The License Holder's Agent had no questions to ask of the Principal Licensing Officer.

The Sub-Committee had no questions to ask of the Principal Licensing Officer.

The Sub-Committee received a verbal representation from the Agent (on behalf of the License Holder):

- a) He explained that the previous license holder had not informed the current holder of the immigration inspection that took place, nor the forthcoming fine from the Home Office, both of which came as a surprise to the current holder.

- b) He explained that he and the Licence Holder were aware of and sympathetic to the remaining objector's concerns. He explained that they had tried to engage with the objector and were keen to resolve their concerns.
- c) He explained that all incidents in relation to the objections occurred during the time of the previous licence holder's management. He stated that along with the remaining objector, the current holder too is a victim of the issues caused during time of the previous holder's management, due to the adverse effect the objections could now have on the business.
- d) He explained that the previous licence holder had agreed a restrictive covenant to not come to the property or run a business within 2km of the premises and had agreed to relinquish the premises license and cease being the designated premises supervisor.
- e) He explained that proposed conditions addressing noise and public nuisance (seen at item 4, 'Supplementary Information - Newly Proposed Conditions and Surrounding Correspondence' (published as a supplement to the agenda)) had been provided for the Sub-Committee's consideration.

The License Holder's Agent responded to questions from the Sub-Committee, and the following was confirmed:

- a) Following a question from a Member, the Agent explained that the accusations of intimidation from staff towards local residents were in relation to car parking disputes and in relation to unwanted staring. The Agent confirmed that the concerns surrounding the unwanted staring had been rectified.
- b) The Agent explained that the Company have required that their staff park their cars away from the premises in order to prevent further car parking disputes and to reduce noise caused by staff. He explained that since the acquisition of the premises there have been no further complaints received in relation to car parking or noise from staff.
- c) The Agent suggested that the proposed conditions (Item 4) be implemented as additional conditions to the licence in the interest of the prevention of any potential public nuisance in the future.
- d) In response to a question from the Chair in relation to the '*report [that] shall be submitted to the Council detailing the potential for noise from amplified music*', as listed amongst the proposed conditions (Item 4), the Agent explained that the intention was that the restaurant Manager would monitor and keep a noise log and report to the Council any noise related incidents that occur.

The Principal Licensing Officer explained that in their current state, a number of the proposed conditions, as put forward by the License Holder's Agent (Item 4), would be unpracticable or unenforceable. The Sub-Committee considered that

the proposed conditions could be amended to facilitate their practicability and enforceability.

The Chair confirmed that the questioning of the License Holder's Agent had been concluded.

The License Holder's Agent did not provide closing a statement.

The Principal Licensing Officer did not provide a closing statement.

The meeting was adjourned at 14:23, and the Sub-Committee and their legal advisor retired from the Council Chamber to consider the application.

Following the consideration of the Sub-Committee, the License Holder's Agent, with support and advice from the Principal Licensing Officer and Public Protection Manager, made amendments to the proposed conditions.

Set out below are the proposed conditions as originally put forward by the License Holder's Agent (as seen at item 4 of the agenda (Supplementary Information - Newly Proposed Conditions and Surrounding Correspondence)), prior to amendment:

- (1) *Amplified music shall not be played at a level that will cause unreasonable disturbance to the occupants of any properties in the vicinity.*
- (2) *Unless contrary to fire precautions and procedures, all access and egress doors and windows shall be kept closed whilst the licence is in use.*
- (3) *No speakers for amplification of music shall be placed on the outside of the premises or on the outside of any building forming a part of the premises.*
- (4) *Alarms shall be fitted to alert staff when they are opened without authorisation.*
- (5) *No music or speech shall be relayed via external speakers other than for events where the prior approval of the licensing authority has been obtained.*
- (6) *Noise from music and associated sources shall not be audible in noise sensitive premises at any time.*
- (7) *A noise limiting device shall be used in relation to all sound amplification equipment used in conjunction with the premises licence.*
- (8) *The noise limiting device shall be properly secured so that it cannot be tampered with.*
- (9) *Monitoring The manager, licence holder or other competent person shall carry out observations in the vicinity of the properties at (insert location), on at least (insert time period e.g. hourly) intervals between (insert start*

time) and (insert finish time) whilst the Premises Licence is in use in order to establish whether there is a noise breakout from the premises. If the observation reveals noise breakout at a level likely to cause disturbance to the occupants of properties in the vicinity then the volume of music shall be reduced to a level that does not cause disturbance. A record of such observations shall be kept in a book for that purpose, such a book shall be completed immediately after the observation detailing the time, location and duration of the observation, the level of noise breakout and any action taken to reduce noise breakout. Such book to be made available at all times upon request to an authorised officer of the Licensing Authority or the Police.

- (10) A report shall be submitted to the Council detailing the potential for noise from amplified music, refrigeration, heating, ventilation and air conditioning plant etc at the premises from affecting neighbouring noise sensitive properties. If the assessment indicates that noise from the premises is likely to affect neighbouring noise sensitive properties then it shall include a detailed scheme of noise mitigation measures to show that nuisance will not be caused to the occupiers of neighbouring noise sensitive properties by noise from the licensed premises. All recommended works shall be completed prior to the commencement of the premises licence and the Licensing Authority is to be notified at least 5 days in advance of the works being completed and the premises being used.*
- (11) A clear notice shall be displayed at every exit from the premises to instruct customers to respect the needs of local residents and leave the premises and the area quietly.*
- (12) Noise from any ventilation, refrigeration or air conditioning plant or equipment shall not cause nuisance to the occupants of any properties in the vicinity.*
- (13) A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.*
- (14) No accumulation of combustible rubbish, dirt, surplus material or stored goods shall be permitted to remain in any part of the premises except in an appropriate place and of such quantities so as not to cause a nuisance, obstruction or other safety hazard.*

Set out below are the proposed conditions as amended by the License Holder's Agent with advice from the Principal Licensing Officer and Public Protection Manager:

- (1) Amplified music shall not be played at a level that will cause unreasonable disturbance to the occupants of any properties in the vicinity.*
- (2) Unless contrary to fire precautions and procedures, all access and egress doors and windows shall be kept closed whilst the licence is in use*

- (3) *Noise from music shall be no more than barely audible at the boundary of any noise sensitive premises.*
- (4) *The manager, licence holder or other designated person shall carry out observations in the vicinity of the premises, at least once a week between 21:00 and closing time in order to establish whether there is a noise breakout from the premises. A record of such observations shall be kept in a book for that purpose, such a book shall be completed immediately after the observation detailing the time, location and duration of the observation, the level of noise breakout and any action taken to reduce noise breakout. Such book to be made available at all times upon request to an authorised officer of the Licensing Authority or the Police.*
- (5) *Within 3 weeks of this determination coming into effect the licence holder shall request in writing to the Council's Environmental Health Department guidance on the nature and specification of a suitable noise impact report with respect to the premises. The Applicant shall then submit a suitable report as agreed by Environmental Health within a further 10 weeks of this guidance being provided, and shall implement the findings of the report within a timeframe to be agreed with the Council's Licensing department in consultation with the Council's Environmental Health team.*
- (6) *A clear notice shall be displayed at every exit from the premises to instruct customers to respect the needs of local residents and leave the premises and the area quietly.*
- (7) *A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.*
- (8) *No accumulation of combustible rubbish, dirt, surplus material or stored goods shall be permitted to remain in any part of the premises except in an appropriate place and of such quantities so as not to cause a nuisance, obstruction or other safety hazard.*

The Sub-Committee and their legal advisor returned to the Council Chamber, and the meeting resumed at 16:23.

The Chair stated that the amendments to the conditions were approved by the Sub-Committee.

The amendments to the conditions were agreed by the License Holder's Agent.

The Chair relayed the Sub-Committee's decision (as detailed below).

The Sub-Committee, having read the material presented to them in the agenda and all the written representations made, having listened to all the evidence and submissions presented at the Hearing, and having regard to statutory guidance and the licensing policy of the Council, decided to:

MODIFY the conditions of the licence by way of the additional conditions put forward by the licence holder's agent, as amended with the approval of the Sub-Committee and with the agreement from the licence holder's agent, set out below:

Additional Conditions:

- (1) Amplified music shall not be played at a level that will cause unreasonable disturbance to the occupants of any properties in the vicinity.**
- (2) Unless contrary to fire precautions and procedures, all access and egress doors and windows shall be kept closed whilst the licence is in use**
- (3) Noise from music shall be no more than barely audible at the boundary of any noise sensitive premises.**
- (4) The manager, licence holder or other designated person shall carry out observations in the vicinity of the premises, at least once a week between 21:00 and closing time in order to establish whether there is a noise breakout from the premises. A record of such observations shall be kept in a book for that purpose, such a book shall be completed immediately after the observation detailing the time, location and duration of the observation, the level of noise breakout and any action taken to reduce noise breakout. Such book to be made available at all times upon request to an authorised officer of the Licensing Authority or the Police.**
- (5) Within 3 weeks of this determination coming into effect the licence holder shall request in writing to the Council's Environmental Health Department guidance on the nature and specification of a suitable noise impact report with respect to the premises. The Applicant shall then submit a suitable report as agreed by Environmental Health within a further 10 weeks of this guidance being provided, and shall implement the findings of the report within a timeframe to be agreed with the Council's Licensing department in consultation with the Council's Environmental Health team.**
- (6) A clear notice shall be displayed at every exit from the premises to instruct customers to respect the needs of local residents and leave the premises and the area quietly.**
- (7) A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.**

- (8) No accumulation of combustible rubbish, dirt, surplus material or stored goods shall be permitted to remain in any part of the premises except in an appropriate place and of such quantities so as not to cause a nuisance, obstruction or other safety hazard.**

The meeting began at 2.00pm, was adjourned at 2.23pm, resumed at 4.23pm, and ended at 4.24 pm

COUNCILLOR STEVEN MCCORMICK (CHAIR)