

**Minutes of a Meeting of the
WBC Licensing and Control Sub-Committee 'B' of
Worthing Borough Council**

Council Chamber, Town Hall, Chapel Road, Worthing

Monday 21 September 2015

Councillor Paul High (Chairman)

Keith Bickers

Susan Jelliss

*Absent

LCCB/15-16/06	Declarations of Interest
There were no declarations of pecuniary interest	
LCCB/15-16/07	Licensing Act 2003 - Application for a Variation of a Premises Licence under Section 34 - 'Bar 42', 42 Marine Parade, Worthing BN11 3QA
<p>Before the Sub Committee was a report by the Director for Communities, a copy of which was circulated to all Members, a copy of which is attached to the signed copy of these minutes as item 5.</p> <p>The report before Members asked the Sub Committee to determine an application for variation of the premises licence for 'Bar 42' of 42 Marine Parade Worthing. The application had been the subject of formal representation from two responsible authorities and five local residents. Mediation had been successful between the applicant and Sussex Police. However mediation had not been successful between the applicant and the Environmental Pollution Team and given the nature of the public representations and lack of direct communications between the parties a mediated agreement was considered unlikely.</p> <p>Senior Licensing Officer introduces his report</p> <p>The Senior Licensing Officer introduced the report to the Committee, he drew members' attention to paragraph 4.1 of the report and explained that the applicant was also seeking to extend the hours for sale and provision of late night refreshment (hot food and drink) in line with hours being applied for the extension of hours for the sale of alcohol and provision of recorded music and the extension of opening hours. The applicant confirmed that the outline of the application had been an accurate one.</p> <p>Questions on the report from Members</p> <p>There were no questions</p> <p>Representation from the Senior Environmental Health Officer</p> <p>The Senior Environmental Health Officer's (EHO) representation is summarised below:</p> <ul style="list-style-type: none">• The application did not adequately promote the licensing objective - prevention of public nuisance;	

- There had been a history of noise complaints and complaints of anti-social behaviour relating to the premises;
- Complaints had been made since 2011 but the volume of complaints had increased in the preceding twelve to eighteen months;
- The applicant had hired an acoustic consultant and had implemented the majority of their recommendations, however sound levels in neighbouring properties was still above acceptable levels;
- The applicant had asserted that he would have sole control of recorded sound levels but had not stipulated what those levels will be;
- Members were told that sound was a complicated issue and that noise created by recorded music being heard in resident's properties was at a low frequency (bass noise) which was disturbing their peace;
- Members were told that residents were also experiencing noise from the terrace which would potentially cause a public nuisance to residents. Particularly for the later hours being applied when residents could reasonably be expected to have peace and quiet.
- Members were played a recording taken of noise from the terrace that the Senior EHO said was an unreasonable level of noise;

Members' questions for the Environmental Health Officer

Members asked questions about other premises in the area and he clarified that the recording played had been made at around 10:30pm.

Applicant's questions for the Environmental Health Officer

The applicant asked the Senior EHO to play a recording from earlier in the evening and said that the recording demonstrated that noise from the terrace was drowned out by passing cars.

Representation from objectors A and B

The representation from objectors A and B are summarised as follows:

- They were being affected by music from the premises but their biggest bone of contention was noise from the terrace which sometimes went on until 2am or 4am in the morning;
- Members were told that the problem was that when the premises closed patrons were not asked to leave;
- The Tangerine bar was respectful and its rules were enforced;
- Members were told that the noise kept the objectors awake, limiting the amount of time they had to sleep;
- the objectors had suffered threats of violence directed at them from the terrace area.

Members questions for the objectors A and B

Members asked questions about the the recording of noise diaries and the length of time the respondents had been living at the premises.

Applicant's questions of objectors A and B

The applicant contested the view of the objectors and purported that they were not being accurate with their reporting of incidents. Members were told that noise from the promenade was being confused with noise from the terrace as the premises was not open at 2 and 4 in the

morning. Members were told that patrons of other premises leaving later at night were creating the noise being reported by residents.

Representation by objector C

objector C's representation is summarised as follows:

- The objector objected to Bar 42 'effectively becoming a club';
- Behaviour and noise from the terrace area was unacceptable;
- Bar 42 played an important role in the Town but it was in the wrong location. The building was built in 1872 and there were no cavity walls which made it almost impossible to soundproof;
- If recorded music went on later in the evening then the objector would not be able to sleep;
- the low frequency of the bass made it difficult for her to sleep.

Members questions for objector C

Members established that the problem of noise had be getting progressively worse for the previous twelve to eighteen months.

Applicant's questions of objector C

The applicant sought to ask the objector why noise complaints had been not been forthcoming in 2011, when the Bar did not have any soundproofing. The objector said that she couldn't explain the reason for the noise getting worse but music being played later would negatively affect the residents.

The applicant asked the objector why she had not responded to requests for feedback after the installation of the soundproofing, the applicant asserted that they had implemented the consultants recommendations and had additionally insulated the chimney but couldn't ascertain whether the works had been successful. The objector stated that it was difficult to speak to the applicant or his mother.

Representation by objector D

Objector D's representation is summarised as follows:

- Soundproofing installed at the premises was not fit for purpose;
- The noise in objector D's flat was 'horrendous';
- The applicant had claimed that the objector had not responded to an email asking for feedback on the installed soundproofing, the objector informed members that he had not responded because the applicant's mother had not responded to an email he had sent inviting her come to his flat and listen to the noise pollution therein;
- The noise from the premises vibrated his flat.

Questions to objector D from Members

Members questioned the objector on the level of noise that could be heard in his flat. Objector D told that members that noise from live music was horrendous, recorded music was half as bad but was still bad.

Questions to Objector D from the Applicant

The objector was asked why he had chosen to make a complaint two days before the hearing but had not made complaints previously. The objector stated that he had made five or six complaints previously but did not routinely complain because he didn't believe that his complaints would get him anywhere.

Representation of the Applicant

The applicant's representation is summarised as follows:

- Bar 42 was a unique live music venue in Worthing that attracted bands from around the UK;
- The Bar was popular which was demonstrated by the £5k raised in 25 days through a kickstarter fund to pay for soundproofing;
- Not all of the events put on by the bar were profitable such as the use of the venue for Northbrook College music assessments and under 18 events;
- The business needed a 2am licence to compete with other bars in the area and fund the loss making events;
- The validity of the noise consultant's report was questioned and it was asserted that the report did not fully address the individual nature of the building, however they had carried out all of the recommendations in phase one and phase two of the report;
- Members were told that the incident described on the 21 August was not carried out by patrons of the premises and the incident took place on the pavement across the road from the premises. Furthermore those involved in the incident tried to gain access following the incident but were turned away by the door staff;
- Members were told that claims of noise were being embellished with false information. Members were shown a CCTV clip of the premises closed at the time an alleged noise complaint had been made;
- the level of noise recorded by the Environmental Health Officer was equated to the level of someone whispering;
- The applicant and his representative sought to demonstrate to the committee apparent inconsistencies in a number of complaints put forward by those making representations;
- Members were told that a lot of the incidents being reported as noise from the terrace had occurred after the bar had closed and disturbances suffered by residents had been from passing public;
- Members were told one resident endorsed the soundproofing work that had been undertaken and had commented that the only thing he could hear in his property was the noise from a computer fan;

Questions for the applicant from Members

Members established that by opening later it was hoped that the bar could pick up customers who used to frequent the 'Rock Room' at the former club 'Occasions'. Members asked about how the terrace area was 'protected' and were told that during operating hours there were door staff overseeing the area and when the premises was shut a chain was put across the entrance to the terrace. The applicant explained to Members the process undertaken by door staff to address noisy patrons on the terrace. The applicant was asked about the regularity of return patrons and were told that the type of customers attending depended upon who was playing in the Bar.

Questions for the applicant from the Senior Environmental Health Officer

The Senior EHO commented that not all of the phase two works were complete such as investigations into the installation of a suspended ceiling or a floating floor. He asked whether consideration had been given into installing anti-vibration mounts. The applicant asserted that the anti-vibration mounts recommended by the noise consultants were not compatible with the speakers currently installed although he did contact the speaker manufacturers who had confirmed that the speaker system was effectively an anti vibration system. The Senior EHO commented that assertions made about the level (decibels) of noise recorded could be misleading as noise was a more complex issue. The low frequency (bass noise) that was being heard in neighbouring properties indicated that the problem of noise pollution was likely to be a structural problem not an airborne problem as had been suggested by the applicant.

Questions from those who made representations

questions were raised and addressed concerning points that had been made in the applicant's presentation and representations.

Summing up from the Senior Environmental Health Officer

The Environmental Health Officer made reference to the applicant's assertion that volume control would be under his sole control. He commented that if this was the case it should have graphic equaliser type controls so it could limit lower frequencies. He told members that in its current state he was concerned that the application could cause a public nuisance.

Summing up of the objectors

- objector A - ongoing noise problems would be exacerbated by varying the licence;
- objector B - problems would escalate should the variation be granted;
- objector C - problems would escalate should the variation be granted;
- objector D - there would be no peace in my flat should the variation be granted.

The meeting adjourned at 8.16pm to consider its decision

The meeting reconvened at 8:38pm

The meeting was told that in reaching its decision, the Licensing Sub Committee had given due regard to the Home Office guidance, the Council's own Licensing Policy and relevant licensing legislation. The Committee also gave regard to Human Rights legislation and the rules of natural justice. Due consideration was given to all representations made at the hearing and in writing. In discharging its functions the Sub Committee did so with a view to promoting the Licensing Objectives, the relevant objectives being the Prevention of Crime and Disorder and Prevention of Public Nuisance.

Resolved: that the application for a variation to the Premises Licence be rejected;

Reasons for decision: It is appropriate to reject the application for the promotion of the licensing objectives.

The licensing sub-committee is satisfied that even with the additional condition that has been agreed between the applicant and Police, the application to extend the hours for the

sale of alcohol, late night refreshment and playing of recorded music would undermine the licensing objectives.

The sub-committee heard from the Environmental Health Officers and residents that there had already been numerous complaints, particularly over the last 12 to 18 months, regarding the level of noise both from within the residents' premises and from the terrace.

The sub-committee accepted the applicant has installed some sound proofing however the noise complaints have continued and it would not be appropriate for the sub-committee to extend the hours of operation at this stage.

Comments from the Committee: The sub-committee would encourage the applicant to continue to liaise with the Environmental Health Officer and would encourage all parties to mediate to try and resolve the issues.

Advice to Parties: Those who have made representations in connection with this application are reminded that they may appeal against this decision within 21 days by giving notice to the Magistrates Court

Interested parties are reminded that they may apply for a review of this licence 'after a reasonable interval' pursuant to section 51 of the Licensing Act

Any licence granted under the Licensing Act 2003 does not override any planning restrictions on the premises nor any restrictions that may be attached to the lease of these premises

The applicant is reminded that it is a criminal offence under the Licensing Act 2003 to carry on licensable activities from any premises in breach of a premises licence

The meeting was declared closed at by the Chairman at 8:45pm, it having commenced at 6.30pm.

Chairman