

LICENSING SUB COMMITTEE - LICENSING ACT 2003

30th August 2022

Present: Councillors Agar, Barnes, Lawrance and Stafford

Officers: Vanessa Brown – Solicitor
Niall McMenamin – Senior Practitioner, Licensing
Nicola Jones – Technical Officer, Licensing
Lucy Robson-Cropper – Democratic Services

10 Election of Chair

RESOLVED: That Councillor Lawrance be appointed Chair.

COUNCILLOR LAWRENCE IN THE CHAIR

11 Declarations of Interest

None.

12 Application for Review of a Premises Licence

The Sub-Committee considered a review of a premises licence, in respect of The Portobello Inn 139 Bransford Road Worcester Worcestershire WR2 4EZ (the Premises).

At the start of the meeting, the Chair made the following statement:

“Presentations to the Sub-Committee are not given under oath. However, I would like to remind all parties that the highest standards are expected and any deviation from these high standards could possibly influence any decision of the Sub-Committee.”

All parties at the hearing were introduced. The Applicant’s representative, Cllr Amos, and the Respondent’s Legal Representative, Mr Gunert, confirmed they were satisfied with the proposed procedure.

The hearing was then temporarily adjourned to allow parties to consider additional information which had been provided the last working day before the meeting, and on the day of the meeting itself, by both the Applicant and the Respondent. The panel were given the opportunity to view video evidence submitted by the Applicant during the adjournment, with the agreement of all parties.

The hearing was reconvened. One of the original panel members had been taken unwell in the intervening period and had been replaced. The Chair suggested that introductions be made again, for the benefit of the new panel member.

The Applicant for the review was represented by Cllr Amos who spoke on his behalf. Cllr Amos requested that the panel be aware that video evidence of noise-related issues arising from the Premises would not necessarily replicate the volume residents were experiencing at the time.

The Senior Practitioner – Licensing presented the report on behalf of Worcestershire Regulatory Services. On 27 May 2022, a joint application was received by the Council, from Mr Hawker and several residents ('the Applicant') who live in the vicinity of Bransford Road, requesting a formal review of the premises licence issued in respect of The Portobello Inn.

The review request related to the 'prevention of crime and disorder' and the 'prevention of public nuisance' licensing objectives, and had been requested by the Applicant largely on the basis of complaints from local residents about noise and anti-social behaviour at the Premises.

The licence for the Premises was held by Marstons. The Designated Premises Supervisor (DPS) was Ms Ruth Yufai. The Senior Practitioner – Licensing explained that the premises licence already had conditions attached, and that an Action Plan had been put in place following a number of complaints from local residents during 2021.

5 representations had been received during the consultation period from local residents in support of the Premises.

All parties were offered the opportunity to ask questions of the Senior Practitioner – Licensing.

The Applicant's representative was invited to address the Sub-Committee.

Cllr Amos explained that the review had been requested due to anti-social behaviour taking place at the Premises. He drew the Sub-Committee's attention to the bundle of 100+ papers submitted by the Respondent on the last working day before the hearing, which he believed to be discourteous and an attempt to avoid close scrutiny.

The Council's Legal Advisor advised the Sub-Committee that Licensing Regulations allowed for papers to be served up to the point of the start of the hearing.

Cllr Amos stated that there had been no issues with noise and anti-social behaviour from the Premises prior to the new DPS taking over in June 2021. Undesirable behaviours which had been perceived initially as post-Covid exuberance had not settled down as expected.

It was the Applicant's belief that the Premises was not licensed to play music or have a TV outside.

Cllr Amos suggested to the Sub-Committee that the issue was not with the Premises but with its management, and that it had been allowed to become more

of a nightclub than a public house. The issues had begun during the Euros football tournament which had attracted an undesirable element. It was the Applicant's view that the issues with noise and anti-social behaviour had not been dealt with effectively and that the terms of the Action Plan had not been adhered to.

In summary, the Applicant had requested the review as a last resort since all other avenues had been explored and had been unsuccessful.

The Respondent's solicitor sought clarification from the Council's solicitor about the licensing status of having a TV outside the premises. The Council's solicitor confirmed this was not a licensable activity.

Sgt Hallam, West Mercia Police drew the Sub-Committee's attention to information in the agenda pack showing how the Police had tried to work with the parties concerned to resolve the issues. He confirmed that the Police had met with the DPS in November 2021 and an action plan had been drawn up, however he acknowledged that incidents continued to be reported, including incidents reported by the Premises.

Sgt Hallam stated that generally speaking, reported incidents were mostly at a level where a Police response was not considered necessary, but they were logged on the system. He commented that it was his view that the needs of residents needed to be balanced with those of the DPS who needed to run a busy pub in order to make a living.

Sub-Committee members asked Sgt Hallam about the source of the complaints, he confirmed that the majority were from residents who were involved in the licence review application.

Responding to questions about the meeting and action plan dating to November 2021, Sgt Hallam confirmed there had not been a follow-up meeting since that time, due to Police staff shortages. He added that there was nothing to suggest any lack of cooperation on the part of Marstons/DPS.

The Respondent's solicitor, Mr Gunert, was invited to make representations on behalf of the Respondent. He expressed regret that attempts to reach a resolution to the situation had so far been unsuccessful.

Mr Gunert stated that there was no intention for the Premises to become a nightclub. Post-lockdown there had been some changes in customer behaviour with outside seating areas generally becoming more popular. Complaints from local residents had tended to focus on activity in this area.

Mr Gunert informed Sub-Committee members that complaints had also been received about plant noise emanating from the Premises. Marstons had employed a noise expert to assess noise levels, and were installing acoustic baffling on some chiller fans as a result. There was some dispute between the Applicant and the Respondent about which of the Premises' fans was causing the issue.

Mr Gunert stressed that the remedial measures being undertaken were not connected with licensable activity but were important evidence of Marstons' commitment to addressing local residents' concerns.

In response to suggestions that Marstons had failed to engage with local residents' concerns Mr Gunert pointed out that complaints about the Premises' function room door being left open had been dealt with swiftly and a trigger alarm and warning notices were now in place. This was another example of residents' concerns being addressed.

Mr Rogers, an acoustician employed by Marstons to assess noise levels, introduced his report. He had monitored noise levels over an 8 day period in 3 different locations, near to clusters of residents who had reported problems with noise.

Mr Rogers noted that the area was mainly residential, with a fairly busy road running through it. His observation was that music noise, people noise and plant noise were observable through the day, but were not at a significant level. The plant noise had however been observed to be at a significant level.

Mr Rogers confirmed that Worcestershire Regulatory Services (WRS) had carried out noise monitoring in April 2022 and had found no statutory nuisance.

Mr Rogers introduced a Noise Management Plan document which included mitigation and recommendations to cover plant, people and music noise. One of the recommendations was that music and TV should not be used outside after 10pm.

Cllr Amos queried the discrepancy between the views of residents and the outcome of Mr Rogers' reports. Mr Rogers commented that he could not know what noise levels had been before lockdown when there had been no complaints from residents, but that the sources of the noise had not changed since restrictions had been lifted. Feedback from residents was that noise levels had changed so dramatically they were unable to cope with current levels, however his observations over the 8 day period were that this was not the case.

Mr Butterworth, a Licensing and Security Compliance Consultant, had been instructed by the Respondent to visit the Premises anonymously and produce a report of his observations. In summary, his report found no issues requiring firm intervention from Premises' employees, and that the DPS had a good relationship with customers and a good knowledge of licensing regulations.

Mr Butterworth's report highlighted 10 recommendations which he believed would be beneficial in rebuilding the relationship between the DPS and the complainants. Mr Butterworth pointed out that although the Applicant's representations suggested that there were issues most weekends, his observations over a Friday and Saturday, Mr Rogers' observations over an 8 day period, and WRS' monitoring period had not brought any major issues to light.

Ms Yafai, DPS, responded to Mr Grunert's questions about her experience of working at the Premises. She commented that she had never received complaints directly and that complaints had come to her via her area manager. She said that she had had neighbours swearing down the phone at her. She added that genuine complaints were dealt with quickly and that in response to comments about neighbours' phonecalls being ignored, it was possible that calls could be missed during busy periods.

When asked if any physical changes had been made to the Premises since before the first Covid lockdown, Ms Yafai responded that following complaints about activity in the alley next to the Premises, fencing had been removed and CCTV installed to monitor the area.

Ms Yafai acknowledged that when she took over at the Premises there had been no handover from the previous DPS and therefore some patrons who had previously been barred may have been admitted, however they were quickly barred again.

Cllr Amos commented that it was the neighbours' assertion that they had been in contact with Ms Yafai and the results had been unsatisfactory. Ms Yafai repeated her comment that she had never been directly contacted, but if sworn at on the phone she would end the call.

Cllr Amos asked for assurance that communication between neighbours and the Premises would be improved. Mr Grunert noted that accounts of contact between neighbours and the Premises differed, but there was agreement that communication needed to be improved in order to move forward.

Ms Yafai's area manager informed the Sub-Committee that Ms Yafai had been encouraged to put on more events since Covid restrictions had been lifted and that in his opinion this may have lead to more issues with neighbours.

Mr Gunert stated that incidents of note happened only occasionally, and until Sunday of the previous week, no complaints had been made in the last 3 months.

Cllr Amos and Mr Gunert were invited to make their closing representations on behalf of the Applicant and the Respondent, respectively. Cllr Amos pointed to the disruption caused to neighbours' lives, and reiterated the view that the issue was down to inadequate management.

Mr Gunert responded that the views expressed on behalf of the Applicant were subjective, and were not supported by the evidence from Mr Rogers, Mr Butterworth, the Police, or WRS. Comments about inadequate management in the Respondent's view amounted to a call for Ms Yafai to be removed from her position as DPS for the Premises. He stressed that Ms Yafai was a competent, determined, and experienced DPS.

The evidence presented by neighbours from the previous Sunday's activities at the Premises related to a charity event which takes place once a year. Mr Grunert acknowledged that the event had generated some noise but this was confined to between 1-6pm in order to minimize the effect on neighbours.

Mr Grunert further commented that the dispute about which fan was causing a noise disturbance was tangential to the central issue.

All parties with the exception of the Members of the Sub-Committee and representatives of Legal and Democratic Services then withdrew to enable to the Sub-Committee to consider its decision.

In reaching a decision, the Sub-Committee had regard to the following points in their deliberation:

- The licensing objectives set out on the Licensing Act 2003.
- The guidance issued under section 182 of the Act.
- The Council's Statement of Licensing Policy.
- The Report presented by the Senior Licensing Practitioner, Worcestershire Regulatory Services.
- The application, written representations and oral representations made at the Hearing, by Councillor Amos on behalf of the residents. The Sub-Committee also viewed video evidence provided.
- The written representations and oral representations made by Sgt Hallam.
- The written and oral representations made by the solicitor representing Marston's Plc., Ms Yafai the Designated Premises Supervisor, Mr Craig Taylor, the Area Manager, Mr Butterworth the Licensing and Security Compliance Consultant, Mr Rogers from Sustainable Acoustics.
- The written representations from residents who opposed the Application and supported the Respondent.

The Sub-Committee decided to modify the condition relating to the closure of doors and windows as follows:

- All doors and windows to remain closed after 9pm, except for ingress or egress

The Sub-Committee decided to add the following conditions to the licence.

- The Noise Management Plan as provided to the Sub-Committee to be implemented in full. Future changes or updates to the NMP to be notified to the Licensing Authority.
- Staff to be trained on the complaints procedure and any complaints not covered by the Noise Management Plan to be separately recorded and made available for inspection upon request by an authorised officer.
- A dedicated telephone number for complaints to be displayed outside of the premises.
- Signage to be displayed at the points of exit encouraging patrons to leave the premises quietly.
- CCTV cameras to be located within the premises to cover all public areas including all entrances, exits and outside areas.
The system must record clear images so as to permit the identification of individuals and must be able to record footage to be securely retained for a minimum of 30 days.
The CCTV system must operate at all times while the premises are open for licensable activities.
All CCTV equipment must have a constant and accurate time and date generation.
The CCTV system must be fitted with security functions to prevent recordings being tampered with, i.e. password protected.
There must be a play back facility on the system that can be operated at the time of a request made.
A trained member of staff must be at the premises during operating hours and able to provide viewable copies on request to police or authorised local

authority officers as soon as is reasonably practicable but in any event within 48 hours.

The CCTV will be provided in accordance with the Data Protection legislation

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

- Members noted and considered the written and oral representations made by the applicant and also viewed the video evidence. The submissions suggested that the issues raised in the Review were linked to poor management at the premises as prior to June 2021 residents had no cause for concern.
- Members noted that the premises was situated in a residential area and that only a relatively small number of the local residents had supported the Review. There were also five residents who had submitted representations in support of the premises.
- Members noted that Environmental Health had not submitted a representation although had conducted their own investigations. Members considered that this, to a small degree, undermined the representations of the Applicant.
- In considering the evidence presented by Mr Butterworth and Mr Rogers, Members were of the view that their comments, observations, and conclusions were an accurate assessment of the visits carried out, however the visits were not representative of the occasions referred to by the Applicant. Members found the recommendations helpful in providing direction for a way forward for all parties.
- Reference was made to a possible change in tolerance following the COVID restrictions and whilst Members were of the view that this maybe a contributing factor, they also considered the comments submitted by the Respondent regarding the current DPS who had been proactive in promoting the business. This would have the potential to increase the number of events and patrons generally and this may have changed the characteristics of the premises.
- Members considered the representation made by Sgt Hallam of West Mercia Police, he confirmed that the majority of the reports received had been from the residents named in the application. Members noted that incidents were graded according to the required response, and the vast majority had not resulted in police attendance. Members were of the view that the police response was not the measure against which the impact should be assessed and that they were entitled to consider all of the complaints and not just those that had resulted in police action.
- Members accepted the evidence provided by the Applicant that their concerns were recent and historically the premises had operated without any impact on the residents. Members did not find the root cause of the change to be down to poor management, but more likely a combination of factors including a change in the business model and possible increase in patrons.

- Members considered that the Applicant, and those supporting the Review, had a genuine wish to be supportive of the business which they considered to be an integral part of the community. Equally Members considered that there had been an acknowledgement by the Respondent that problems had occurred, and they had taken steps to explore the concerns raised and actively sought to find solutions.
- Members noted that steps were already in place with regards to the noise generated by the refrigeration fan and Members considered that this was also an indication of the premises seeking to be a good neighbour.
- A specific concern raised by the Applicant was the lack of response to complaints. There had been occasions when telephone calls were not answered and whilst Members accepted that this may be the case when the staff are busy, it is more likely that those are the occasions when complaints will be raised. It was submitted that complaints direct to Marstons PLC would be cascaded to the Area Manager and then to the DPS who may not receive them for anything up to 2 weeks. Members were of the view that the nature of the complaints were such that they would most likely require an immediate response. Members were of the view that a robust complaints process and a dedicated telephone number for residents, or indeed anyone else, would enable dialogue at the point of concern rather than an escalation of the issue.
- The Noise Management Plan presented to Members was prepared following an assessment by Mr Rogers. Members considered this to be comprehensive and its use as a live and evolving document would ensure that the principles within it were kept under review. The Plan included forms to record complaints of noise, Members considered a separate complaints process, and training on that process should be put in place for any complaints not covered by the NMP. Should there not already be a company complaints procedure in place then one should be instigated to include the details of the complaint and action taken.
- Members considered the Action Plan that was agreed during the meeting at Worcester Police Station on the 15th November 2021 where a number of actions were identified. Although a follow up review was scheduled for the beginning of January 2022 this did not take place, this was not due to the unwillingness of the DPS or Marston's. It was recorded that a number of actions to be undertaken by the premises had been carried out.
- Members noted that the premises had CCTV and considered it appropriate for this to be a condition of the licence given the nature of the complaints of crime and disorder and public nuisance.
- In the evidence presented by the Respondent, there was a photograph of a sign asking patrons to leave the premises quietly, if not already in place Members were of the view that signage at all exit doors to remind patrons leaving the premises to do so quietly was an appropriate condition.
- In conclusion, Members considered that the complaints detailed in the submissions were relatively recent and historically the premises and

residents had been good neighbours, having regard to all the representations Members were confident that the relationship between the parties could be rebuilt as both had expressed a willingness to draw a line in the sand and move forward.

- The conditions to be modified and added to the licence were deemed to be appropriate having regard to the evidence presented and considered.

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 is received by the Applicant.

Duration of the meeting: 10:00-11:00; 12:30-17:20