

DECISION NOTICE

COMMITTEE: Licensing Sub-Committee (Licensing Act 2003 and Gambling Act 2005)

DATE: Tuesday, 12 December 2023

Premises: Ye Olde Black Bear, High Street, Tewkesbury, GL20 5BJ

Applicant: Tewkesbury Borough Council's Environmental Health Team

Application for a review of a premises licence under the public nuisance licensing objective.

Present: Councillors N D Adcock, H C McLain and G M Porter (Chair).

Representatives of applicant: Environmental Health Officer
Principal Environmental Health Officer

Representatives of the respondent: Luke Haynes, Respondent (Premises Licence Holder)
Leigh Shelvis, Solicitor

Responsible Authorities: None

Other Persons addressing the Sub-Committee: Six Other Persons speaking in support of the review.
Two Other Persons speaking in objection to the review.
Gloucestershire Councillor C M Cody – speaking on behalf of local residents.
Tewkesbury Borough Councillor M G Sztymiak – speaking on behalf of local residents.

SUMMARY OF REPRESENTATIONS

1. Aside from the applicant, no Responsible Authorities had made representations in relation to the application.
2. 332 representations were received from Other Persons during the consultation: 32 representations were made by residents living in close proximity and affected by the operations of the premises; 21 representations were received by parties who were against the review and offered relevant information; one neutral representation was from Gloucestershire County Councillor C M Cody; 267 representations were made by parties who were supportive of the operations of the business – these were not relevant representations under the Licensing Act 2003.

PREMISES LICENCE

The premises is licensed for the following activities and hours:

Sale by Retail of Alcohol	Friday and Saturday 09:00 - 01:00
Sale by Retail of Alcohol	Sunday to Thursday 10:00 - 00:00
Performance of Live Music	Friday and Saturday 09:00 - 01:00
Performance of Live Music	Sunday to Thursday 10:00 - 00:00
Performance of Recorded Music	Friday and Saturday 09:00 - 01:00
Performance of Recorded Music	Sunday to Thursday 10:00 - 00:00
Entertainment similar to Live Music, Recorded Music	Friday and Saturday 09:00 - 01:00
Entertainment similar to Live Music, Recorded Music	Sunday to Thursday 10:00 - 00:00
Late Night Refreshment	Sunday to Wednesday 23:00 - 01:00
Late Night Refreshment	Thursday to Saturday 23:00 - 02:00
Opening hours to the public	Sunday to Wednesday 07:00 - 01:00
Opening hours to the public	Thursday to Saturday 07:00 - 02:00

DECISION

Having considered the application; the evidence provided; the representations made by all parties, including those made at the hearing; the provisions of the Licensing Act 2003, the obligation to promote the four licencing objectives; the relevant sections of the Council's Statement of Licensing Policy and the Statutory Guidance it was resolved that the conditions of the premises licence be modified as follows:

CONDITIONS CONSISTENT WITH THOSE RECOMMENDED BY THE RESPONSIBLE AUTHORITIES AND AGREED WITH THE APPLICANT

1. The premises licence holder, or an authorised member of staff, must ensure that all public external doors and windows are closed when amplified regulated entertainment in the form of live and recorded music is taking place internally, except to allow entry and egress. The public external doors must be on a self-closure fitting so that they cannot remain open. A plan showing public external doors/windows shall be submitted to the Environmental Health Team and agreed in writing within 14 days of the decision notice being received.
2. There must be no deliveries or collections relating to licensable activities at the premises between 2000 hours and 0700 hours on any day.
3. There must be no emptying of recycling (including bottle bins) or waste bins between 2000 hours and 0700 hours on any day.

4. The premises licence holder, or a responsible person nominated by the premises licence holder, must maintain a log of complaints in respect to nuisance. The log must be kept for a continuous 12-month period and must be made available for inspection by Officers of Tewkesbury Borough Council or the Police. (The complaint log must include the name and address of the complainant, date/ time, nature of complaint and any action to remedy where applicable).
5. All performances of regulated amplified live and recorded music held in the external areas are to cease by 2230 hours on Fridays and Saturdays and by 2130 hours on Sundays.
6. All performances of regulated amplified live and recorded music held in the external areas are not permitted to last longer than 2 hours on Fridays and Sundays and 4 hours on Saturdays.
7. The premises shall be permitted to perform regulated amplified live and recorded music on New Year's Eve until 0030 hours on New Year's Day, in the external areas of the premises.

ADDITIONAL CONDITIONS IMPOSED BY THE LICENSING SUB-COMMITTEE

1. Amplified music taking place in any outdoor area, including the terrace/patio area, must be limited to 32 days per calendar year and cease at 2230 hours. Local residents, the Licensing Authority and Tewkesbury Borough Council's Environmental Health Department must be given at least 14 days written notice of these events. The local residents must be provided with a contact telephone number in case of any issues.
2. The premises licence holder must submit a written noise management plan (NMP) to include the preventative measures that will be implemented at the premises. The NMP shall be produced by a competent person who is a member of the Institute of Acoustics (IOA). The NMP must be submitted to the Environmental Health Department and must be agreed prior to any regulated entertainment taking place at the premises (internally or externally). The NMP must also state the area of local residents that will be included in any event notification. The NMP must be adhered to at all times.
3. A noise limiting device must be installed and must operate at all times regulated entertainment takes place internally at the premises. This includes the installation of a tamper-proof noise limiting device, set to levels agreed with Tewkesbury Borough Council's Environmental Health Department. All live and recorded music played must be limited by the noise-limiting device. No live or recorded music (except background music) can take place until this device has been fitted and the levels set with Tewkesbury Borough Council's Environmental Health Department.
4. The rear external garden, including the terrace/patio area, must be cleared of customers and secured by 2230 hours each night save for use of the Designated Smoking Areas as identified on the site plan. There is to be no consumption of food or drink after 2230 hours in any external area of the premises. The Designated Smoking Area must be patrolled by a staff member at least every 30 minutes to ensure that customers and staff do not congregate in this area and to ensure there is no food or drink in this area.
5. Signage shall be erected to direct patrons to the Designated Smoking Area, to advise on restrictions on food and alcohol after 2230 hours and to request patrons to have consideration for local residents. All signage to be agreed with the Licensing Officer at Tewkesbury Borough Council.

CURRENT CONDITIONS REMOVED BY THE LICENSING SUB-COMMITTEE

1. 12. Additional patrols will take place by members of staff, internally and externally, to limit any noise pollution when entertainment is being offered within the premises.
2. 14. Where currently in use, text/radio pagers will continue to be used for the additional hours

of trading and will be monitored by a responsible member of staff.

3. 16. The outside drinking area will not be used by customers consuming food and/or drink after 23:00.
4. 17. The gardens of the public house, except for the Designated Smoking Area identified on the site plan, to be closed at 23:00 with no food or alcohol being consumed outside after this time.
5. 18. That use of external areas after 23:00 shall be restricted to the Designated Smoking Area as identified on the site plan.
6. 19. Access to the Designated Smoking Area shall be monitored to ensure no food or drink is taken into the area after 23:00.
7. 20. The Designated Smoking Area shall be regularly patrolled during opening hours to monitor noise levels from patrons.
8. 31. On any evening when the premises are open for entertainment/music, other than low level background music, beyond 23:00 hours, all windows and doors shall remain closed, other than when persons are actually entering or leaving the premises, in order to reduce noise escape.
9. 32. The designated premises supervisor will ensure the effective overall management of live or recorded entertainment, such as by monitoring noise levels outside the premises to ensure that noise from such activities is effectively inaudible inside neighbouring premises after 23:00 hours.

REASON

The Licensing Sub-Committee considered that it must carry out its functions with a view to promoting the four licensing objectives, as set out in Section 4(2) of the Licensing Act 2003. The Sub-Committee could not take into account representations which did not relate to one or more of those licensing objectives and it was acknowledged that any representations received must be relevant and evidenced-based.

CONSIDERATION

The Sub-Committee acknowledged the time and effort the respondent had put into restoring the premises and that he would like the premises to be able to foster the musical creativity of the community of Tewkesbury and continue to be a viable and successful business.

In determining the application, the Sub-Committee considered the fact that no other Responsible Authorities had commented on the application. It also considered the steps put forward by the respondent to promote the licensing objectives since the application for the review had been submitted and the fact that there had been 32 internal events in that time without any issues being caused to the residents.

The Sub-Committee was concerned by the lack of engagement from the respondent since the premises had opened and that it had led to the review. The Sub-Committee was grateful he was now working with the applicant and hoped this relationship could continue going forward. The Sub-Committee noted that the applicant had issued warning letters requiring improvement as part of its stepped approach and that these had failed to address the concerns raised by residents. The Sub-Committee therefore took the lack of engagement from the respondent and the relevant warning letters sent by the applicant into account when making its decision.

On that basis, the Sub-Committee believed it was necessary to modify the conditions of the current licence and that the conditions being imposed were necessary, proportionate (regulating the outdoor amplified music events not all regulated entertainment) and enforceable in order to mitigate

the effects the nuisance was having on the residents. The applicant was the relevant statutory body for dealing with the nuisance therefore the Sub-Committee believed that the conditions proposed by the Environmental Health Authority, as amended by the Sub-Committee, would promote the licensing objectives. Furthermore, the Sub-Committee had adopted a number of the conditions proposed by the respondent when looking to modify the conditions of the licence. The Sub-Committee was satisfied that these extra conditions would go a long way to alleviate some of the issues raised in the representations.

APPEAL

All parties were reminded of their rights of appeal against the Licensing Authority's decision pursuant to Section 181 of and Schedule 5 to the Licensing Act 2003. An appeal must be made to the Magistrates' Court and commenced within 21 days of notification of the authority's decision.