

TEWKESBURY BOROUGH COUNCIL

Minutes of a Meeting of the Licensing Sub-Committee (Licensing Act 2003 and Gambling Act 2005) held at the Council Offices, Gloucester Road, Tewkesbury on Tuesday, 12 December 2023 commencing at 10:30 am

Present:

Chair

Councillor G M Porter

and Councillors:

N D Adcock and H C McLain

LSB/A.5 ELECTION OF CHAIR

5.1 It was proposed, seconded and

RESOLVED That Councillor G M Porter be appointed as Chair for the meeting.

LSB/A.6 ANNOUNCEMENTS

6.1 The evacuation procedure, as noted on the Agenda, was advised to those present.

LSB/A.7 DECLARATIONS OF INTEREST

7.1 The Committee's attention was drawn to the Tewkesbury Borough Code of Conduct which was adopted by the Council on 24 January 2023 and took effect on 1 February 2023.

7.2 There were no declarations of interest made on this occasion.

LSB/A.8 PREMISES LICENCE REVIEW - 22/02043/LIQVAR YE OLDE BLACK BEAR, HIGH STREET, TEWKESBURY GL20 5BJ

8.1 The report of the Licensing Team Leader, circulated at Pages No 1-236, outlined an application for a review of the premises licence in respect of Ye Olde Black Bear (Black Bear), High Street, Tewkesbury, GL20 5BJ. The Licensing Sub-Committee was asked to determine the application by making no changes to the current premises licence; modifying the conditions of the premises licence; excluding a licensable activity from the scope of the licence; removing the designated premises supervisor; suspending the licence for a period of not exceeding three months; or, revoking the licence.

8.2 The Chair asked all parties present to identify themselves and explained the procedure that would be followed by the Sub-Committee. The Licensing Team Leader advised that the review application was submitted by Tewkesbury Borough Council's Environmental Health team under the public nuisance objective. Ye Olde Black Bear had reopened in June 2023 after being closed for a considerable amount of time for renovation works. The premises offered wet sales and entertainment and currently had pop-up food traders in the garden area. The

public house was renowned for being the oldest pub in Gloucestershire. The current licensed hours were set out at Page No. 3, Paragraph 1.5 of the report and a copy of the premises licence, showing all non-standard timings and current premises licence conditions, was attached at Appendix A to the report. Prior to reopening, the Licensing Team Leader had visited the premises in August 2022 and met with the premises licence holder where she explained the licence conditions along with the scope of the licensed area and gave advice in relation to music in the outside areas including the need to contact the Environmental Health team. After reopening, the Licensing and Environmental Health teams received complaints regarding use of the outside area, namely music and use of the outside seating area for smoking. The Licensing team conducted various compliance visits as set out in the report and continued to be copied into nuisance complaints to the Environmental Health team. A written warning was issued on 15 August 2023, as set out at Appendix G to the report, and an application to review the premises licence was received from the Environmental Health team on 19 October 2023. The Environmental Health Officer had proposed conditions they would like to see imposed on the premises licence and these were listed at Page No. 5, Paragraph 2.8 of the report. The application had been administered in accordance with the Licensing Act 2003 and was subject to a 28 day consultation in accordance with the regulations. Public notices had been displayed at the premises and on the Council's website. It was noted that the email address for representations to be submitted had been spelt incorrectly; however, following discussion with One Legal, it was determined that the consultation period did not need to be extended as representations were being received and revised notices were displayed on 10 November for the remainder of the consultation. No representations had been made by any other responsible authority, including Gloucestershire Police, and 332 representations had been received during the consultation period, as set out at Appendices J-N of the report. It was noted that, of the 332 representations, 267 were made by parties which were supportive of the operations of the business which were not relevant representations under the Licensing Act 2004. Similarly, the comments in relation to parking and traffic concerns were not relevant to the promotion of the licensing objectives and should not be taken into consideration when determining the application. The Licensing Team Leader advised that a written submission had been received from the licence holder on Friday with proposed conditions, circulated separately, in response to those proposed by Environmental Health. In determining the application, the Sub-Committee must have regard to the statutory guidance issued by the Secretary of State, the Council's adopted policy statement, the representations made and the evidence presented at the meeting. The Sub-Committee must take such steps as it considered appropriate for the promotion of the licensing objectives which could include: making no changes to the current premises licence; modifying the conditions of the premises licence; excluding a licensable activity from the scope of the licence; removing the designated premises supervisor; suspending the licence for a period of not exceeding three months; or, revoking the licence.

- 8.3 As there were no questions for the Licensing Team Leader, the Chair invited the applicant to put their case to the Sub-Committee. The Environmental Health Officer advised that it was unusual for the Environmental Health team to request a review of a premises licence - the last premises licence review called by Tewkesbury Borough Council's Environmental Health team was over 10 years ago. Every year, the team received numerous noise complaints against commercial and licensed premises; however, the majority of these were dealt with informally, so formal action was rarely required. This demonstrated it was not a process that was triggered lightly. Given the number of complaints received regarding noise from the Black Bear, the increasing level of evidence and limited engagement from the Black Bear, the decision was made to call for a licence review under public nuisance grounds. Environmental Health had powers under the Environmental Protection Act 1990 and a statutory nuisance had been established on 6 October

2023. No abatement notice had been served as additional time was given to the designated premises supervisor to abate the statutory nuisance. Whilst, there was an ongoing investigation with respect to noise and statutory nuisance provisions, the purpose of triggering the review process was to bring a higher level of long-term control and management to reduce the negative impact on local residents. The three main areas of concern were internal noise, external noise and people noise. Internal noise was primarily due to the escape of noise from the structure and the volume at which the music was being played; the external noise from music related to the volume and prolonged duration of the music, typically over a weekend; and, the external people noise related to the overall volume and cumulative impact of people's voices coming from the rear garden of the premises. To demonstrate the concerns and impact on local residents, two videos had been included as part of the review application - whilst the videos did not have sound levels associated with them, they helped to provide some context to the issues the local residents had experienced. After playing the videos, he indicated that he would also play some audio clips captured by the team's noise-monitoring equipment, which did give sound levels. The audio clips had been annotated within the report but he would provide an overview before playing the clip. It was worth highlighting, when looking at nuisance, that although volume and sound levels were essential, other key considerations were frequency, duration, timing, nature of the area and reasonability.

- 8.4 The Sub-Committee was shown two video clips followed by three audio clips. The first audio clip was taken at approximately 0444 hours at Bredon Road where a bin lorry could be heard emptying waste, peaking at 66.8 dB(A); the second audio clip was taken at approximately 2118 hours at Bredon Road where a band could be heard playing, with drums and vocals audible, peaking at 56.8 dB(A); and the final audio clip was taken at approximately 1951 hours at Mythe Road where a band could be heard playing with the crowd audible, peaking at between 40 and 45 dB(A) with peaks in noise above 45 dB(A). The impact of these events had been substantial and, when combined over the summer period, the residents had experienced a prolonged disruption to their lives and routines. As demonstrated by the submitted log sheets, this included residents being woken or unable to sleep due to the music levels or people noise and being unable to open windows without being subjected to high noise levels, or having to close windows to be able to hear their own TV. In addition to this, there was a psychological impact in terms of the stress and anxiety of knowing the noise was going to cause disturbance on at least a twice-weekly basis, along with the effects of sleep disturbance and deprivation and its cumulative impact. During the investigation, the Environmental Health Officer had spoken to at least two residents who had started crying on the phone due to the impact and disturbance the noise had on themselves and their lives. Reaching the sound levels that the noise monitoring equipment had captured was considered excessive, especially as that noise level was experienced within a property. As Members were aware, Environmental Health had proposed a number of conditions which Officers believed would substantially assist in reducing the concerns of the team and local residents. Throughout the investigations, and even prior to the opening of the Black Bear, the Environmental Health team had been in communication with the designated premises supervisor and had given advice and guidance on noise control. Up until calling the review there were no significant improvements, or measures put in place to control noise other than monitoring. Unfortunately, this had not proven successful, mainly due to the view of the designated premises supervisor in terms of how much noise the residents should have to put up with living next to a pub. Looking at some of the proposed conditions and considering the primary concerns, internal noise should be easier for the designated premises supervisor to tackle, as the fabric of the building would provide a certain level of attenuation. With effective and careful management, the Environmental Health team believed it was possible for the Black Bear to have regular internal music without having a detrimental effect on the neighbouring

properties. A Noise Management Plan (NMP) had been requested within proposed condition 2, to be produced by a suitably qualified person who was a member of the Institute of Acoustics, covering internal and external noise. The NMP should be completed in agreement with Environmental Health. This would ensure that all the measures implemented within the premises were targeted, effective and clear to all parties, particularly given the unique nature of the structure and overall concerns. An NMP should cover several noise-related aspects, including identified sources of noise, recommended noise limits, where appropriate, staff responsibilities concerning noise, and noise mitigation measures with relevant acoustic data. A noise management plan undertaken by a competent person within acoustics would ensure a higher level of control and assist in reducing noise concerns. Proposed condition 3 recommended a tamperproof noise-limiting device to be used when all live and recorded music was played internally to reduce the impact of excessive internal noise escaping, or travelling through the structure; this was particularly important given the proximity of the neighbouring flats along the High Street. The levels would be set by an Environmental Health Officer within neighbouring properties, the noise limiter would then be sealed so the levels could not be tampered with. This was important because history showed it was not possible to rely on noise monitoring from the pub alone, and the Black Bear had a variety of different bands playing. External noise from the Black Bear would be much harder to attenuate due to the close proximity of residential properties in all directions from the pub. It would be inevitable that music played in the garden would be clearly audible in neighbouring properties, therefore, it was the view of the Environmental Health team that the only way to control the impact of noise from the garden was to limit the frequency and duration of music. Within proposed condition 1, the overall use of external music would be restricted to six times per calendar year which allowed for the fact that the Temporary Events regime permitted licensed premises to apply for additional events - a single premise could have up to 15 temporary events in a calendar year, as long as the total length of the events was not more than 21 days. Therefore, this would allow the Black Bear to have outside music events for 27 days per calendar year - in context this would equate to one event every other weekend. Any more was felt unreasonable by the Environmental Health team given the level of disturbance that had been proven by these events and the lack of ability to attenuate the noise in this location. In terms of external people noise, the Black Bear had licensed opening hours until 0200 hours Thursday to Saturday and until 0100 hours Sunday to Wednesday. The smoking shelter at the rear of the property was causing problems for residents with people shouting and swearing until closing hours. Members would be aware that Wetherspoons had experienced similar problems with its rear garden historically, being in close proximity to neighbouring properties. That premises successfully closed its garden at 2200 hours and any smokers went to the front of the premises where they were not allowed to congregate or cause noise disturbance outside. This had worked very successfully to control patron noise in that location. Condition 5 sought to close the rear garden at 2230 hours and required customers to smoke at the front of the premises under the control of an SIA registered member of staff. Should Members be of the opinion that the smoking area could be controlled at the rear of the property, a condition was requested for the area to be regularly monitored - at least every 10 minutes - and that seating not be provided and no drinks be allowed. Within the last few days, the Environmental Health team had been in communication with the designated premises supervisor and his legal representative to discuss the proposed conditions and had reached some agreement; however, it had not been possible to reach an agreement on several key conditions as outlined. Having reviewed the conditions proposed by the premises licence holder, it was not felt these would protect the residents. Six community events and unlimited numbers of standard events of below 300 people were being requested - this was typical of most external events for the Black Bear

so provided no more protection for residents than was currently in place. The internal noise was only controlled by closing doors and windows and monitoring by the designated premises supervisor which had caused problems and was the reason for the premises licence review. The proposed rear garden condition asked for the garden to be regularly monitored by a SIA registered member of staff; however, during discussions with the designated premises supervisor's legal representative, it was understood they conceived this to be once every hour which was not a suitable control to protect neighbours. In conclusion, the Environmental Health team felt that the impact on residents' lives was significant. All the residents wanted was to be able to enjoy their properties and gardens in the summer, without the substantial impact of noise from the Black Bear and it was requested that the Sub-Committee impose the proposed conditions to ensure adequate controls were put in place.

- 8.5 A Member sought clarification as to whether the premises licence holder received a copy of any complaints received and the Environmental Health Officer advised that they had written to the premises licence holder in relation to the complaints but they did not usually receive a copy of the complaints. The Member noted the suggestion that the premises licence holder kept a log of complaints and asked how he could do that given that he did not receive a copy. The Environmental Health Officer advised that the log was intended for those complaints made directly to the premises and offered another level of control as Officers could request to see the relevant documentation to establish what had been done in relation to particular complaints. A Member asked for context in terms of the decibel levels referenced in respect of the audio clips and was advised that 66dB(A) would be the equivalent of a loud conversation within a metre of someone. It was noted there was a scale of decibels which did not start on zero – complete silence would be around 30dB(A) whereas a washing machine would be about 60dB(A). The audio clips of the music would be similar to what residents were hearing in their properties and Officers had witnessed this could be heard over their televisions. In response to a query as to whether there was a recommended level of decibels, the Principal Environmental Health Officer advised that, unfortunately, there was not – every background noise level was different, for instance, the town centre would have higher background level than the countryside. When setting noise limiters, the Environmental Health team listened to noise levels from within a property and decided what was reasonable – there would be some noise for those living in proximity to a public house but residents should be able to go to sleep at 2200/2300 hours. Noise limiters were set during a real scenario, for instance, when a band or music was playing in a pub, and sealed so they could not be tampered with. If the band or music exceeded the set level, it would cut out. Some noise limiters had a traffic light system to show when the limit was approaching. A Member asked if the noise limiter stopped the music or reduced the volume to a certain level and was advised this would depend on the type of limiter but the majority cut the music off. In response to a query as to whether noise or type was more important, the Principal Environmental Health Officer advised that one was not more important than the other and both were considered when assessing nuisance. The average person was expected to sleep between 2300 hours and 0700 hours; however, clearly there were variations to that and this did not mean that before 2300 hours people could make as much noise as they wanted – people had a right to use their gardens and open their windows without being disturbed. A member noted that the Environmental Health team had referred to a restriction of six events per year plus 15 Temporary Events and asked if this would apply to outside events only. The Principal Environmental Health Officer confirmed that was in relation to external music only as it was considered the internal noise level could be managed effectively so regular events could be held inside without impacting on residents. External noise was much more difficult to attenuate. In response to a query as to whether there had been any improvement since the request for the licence review, the Environmental Health Officer advised

there had been limited improvement since the process was initiated with a lot of mixed feedback from complainants – a number of residents were waiting for the review before making further comment. There had been less noise due to the winter weather but it was expected this would increase in spring and summer. A Member asked whether the Environmental Health team was confident that a noise limiter would address the issue and the Principal Environmental Health Officer advised that a number of conditions had been agreed with the premises licence holder and their solicitor; however, the Environmental Health team was requesting additional conditions 1, 2, 3 and 5, as set out at Page No. 5, Paragraph 2.8 of the report, which had not yet been agreed. It was felt those conditions would strike a balance between the pub being successful alongside the residents. In terms of smoking, a Member noted that it was suggested that people go to the front of the premises rather than using the garden and she asked how that would work in practice. In response, the Principal Environmental Health Officer explained that the noise levels from the garden were excessive and the garden area with its covered seating area provided a nice environment for people to congregate which encouraged them to stay out there. If smokers were required to go to the front, they would have their cigarette and then go back in. If the smoking area was to remain in the garden, it would need adequate controls to prevent people from taking their drinks with them, removal of the seating and regular patrols, albeit discussions were ongoing as to how often 'regular' should be. In response to a query as to where the front smoking area would be, Members were informed it would be next to the front door on the High Street – Wetherspoons had a similar arrangement after having problems in the garden whereby anyone wanting to have a cigarette after 2200 hours went out to the front and this worked well. A Member asked who would have control over this arrangement and was advised that it was for the designated premises supervisor to have control over their patrons.

- 8.6 The Chair invited questions from the other parties present at the meeting. The Gloucestershire County Councillor for the area asked whether an event cancelled due to adverse weather would be credited back to the premises and the Principal Environmental Health Officer confirmed that if an event could not go ahead it could be rescheduled. The Gloucestershire County Councillor raised concern that smoking on the High Street could be an issue for people who lived there so it would just be moving the problem somewhere else and she asked if there would be something to collect the debris. In response, the Principal Environmental Health Officer advised that the reason for moving the smoking area was to ensure the right level of control so it was used just for someone to have a cigarette rather than being a nice environment for them to linger. An alternative had been put forward but it would need to be controlled. Litter was an issue for the designated premises supervisor to control but there should be a receptacle for people to put their cigarettes into. The Gloucestershire County Councillor expressed the view that 2230 hours seemed fair but was also quite late as children, and some adults, went to bed before that. The Principal Environmental Health Officer acknowledged that people had different patterns but, as previously stated, the average person was deemed to sleep between 2300 hours and 0700 hours. People were living in close proximity to a pub so there was a need to strike a balance and 2230 hours was considered to be a time when people would be preparing for bed. The Gloucestershire County Councillor indicated that, even if people were required to leave the garden at 2230 hours, that did not mean they would stop drinking at that time. The Principal Environmental Health Officer clarified that, as part of the review, they were not seeking to control the opening hours but were asking that the garden be clear of patrons by 2230 hours after which time the only people outside would be those going for a cigarette. In response to a query regarding the number of events, the Principal Environmental Health Officer explained that the proposal was for six community events plus 15 Temporary Events – these covered events for up to 21 days. The Licensing Team Leader confirmed there was currently a relaxation which covered events up to 26 days but that was due to end on 31

December 2023. The Gloucestershire County Councillor asked what happened in relation to Christmas Eve and New Years Eve and was advised that a separate condition had been agreed for New Years Eve but Christmas Eve would need to be one of the six community events or 15 Temporary Events. In response to a query as to whether the events were internal or external, the Principal Environmental Health Officer advised that the limits only applied to outside entertainment. The premises licence holder's solicitor asked whether the Environmental Health Officer had attended the noise recordings on 22 and 28 September and was informed the Officer had not been there in person. On that basis, the solicitor asked if the notes of the noise recordings, attached at Appendix I to the report, were an accurate reflection of what was recorded and the Environmental Health Officer confirmed that was the case.

- 8.7 As there were no other responsible authorities present at the meeting, the Chair invited the other persons who had made representations to address the Sub-Committee. A local resident indicated that they had lived opposite the Black Bear for 25 years and had never felt the need to approach Tewkesbury Borough Council, despite the close proximity. The pub had previously held the odd karaoke night and he had spoken to the licensee without any issues. There had been problems with the now defunct Montells nightclub but they had been dealt with through the appropriate channels and had not involved the Black Bear as such. Since the pub had reopened, it had been a constant source of disturbance throughout the summer with little attempt to address the concerns. He questioned whether the premises licence holder was aware of the licence conditions as these had been breached on numerous occasions, especially in terms of outside music and what should be the designated smoking area – the premises had gone from a public house to a live music venue with residents having to endure loud music every weekend from 2030 hours until midnight and beyond. The local resident had spoken to the premises licence holder who was unaware of the licence conditions which he had needed to explain to him. The premises licence holder had stood in his property and heard the noise but his response had been that if he lived next to a pub he should expect it, that it sounded ok to him, that his customers liked the noise, the traffic was noisier and it depended which way the wind was blowing. The premises licence holder had said he wanted to run a community pub but had turned against that very community at the criticism. In his view the licence was far too open ended and the opening hours did not reflect the pub's location among residential properties. He hoped it would be reviewed and altered accordingly to prevent reoccurrence of disturbance in the summer months. In the premises licence holder's defence, he noted that acoustic curtains had been installed which had proven to be effective and he thanked him for that as it had helped with the issue in terms of internal music. Another local resident indicated that residents recognised the business needed to be successful but, since the pub had reopened, the music had been excessive and had caused more problems than Montells nightclub when that had been open – those issues had been resolved through use of a noise limiter and, whilst there had been antisocial behaviour at that time, it was not due to noise. He agreed with the previous speaker that the measures recently put in place had been effective in terms of the internal music and he did not hear a great deal anymore. He had been upset by the social media campaign which painted local residents as 'moaning Nancys' – he had lived in the town for 23 years and the noise level was far in excess of what he expected from any of the public houses in the area. The problem was the garden and the level of amplification, made worse by people singing along. There needed to be controls and he asked the Sub-Committee to impose them – this would not stop the Black Bear from operating, and he would not want that to be the case, but it should not be at the expense of local residents. A Member noted the suggestion to restrict the duration of music to four hours on a Friday and Saturday and asked it that was per music session or per act. The premises licence holder's solicitor clarified it was four hours on a Saturday and two hours on Friday and Sunday. A Ward Councillor for

the area congratulated the premises licence holder on the restoration of the building which had taken a long time, and no doubt a lot of money; whilst his efforts were appreciated, it did not give him entitlement to make noise which disturbed the lives of people living near the premises. The premises licence holder must abide by the licensing objectives and, in this case, he was not fulfilling the need to prevent public nuisance. In the professional opinion of the Environmental Health team, the level of noise was creating a statutory nuisance and one way of addressing this was through a formal review of the licence with a number of conditions being suggested. At this point he mentioned there had been a certain amount of misinformation, for instance, the Council was not trying to shut down the premises and he had not come across anyone who had suggested that was the case. In his view, the conditions suggested were reasonable and based on common sense which would protect patrons and residents. The playing of music in the garden was having a detrimental impact on residents in terms of their health and wellbeing – some already had medical conditions and required rest and relaxation, not disturbance. They found the noise an oppressive intrusion and their ability to sleep was dictated by what time the performance stopped. Some residents had moved away to avoid the noise and, in his opinion, the number of events should be limited to six, as suggested by Environmental Health. It was suggested that events finish at 2230 hours and he supported the reductions but thought they needed to go further. Wetherspoons restricted rear garden use from 2200 hours and it was similar to the Black Bear in terms of use by patrons so he felt there should be a consistent approach which would allow noise to subside and give residents a period of respite. He noted the late submission from the premises licence holder but could not see how the conditions proposed by Environmental Health would impact on use of the pub. Community spirit should start with concern about the immediate neighbours but the licence holder seemed determined to use the garden as a music venue irrespective of its impact upon them. People were entitled to enjoyment of their property and he felt the Council had a responsibility to impose restrictions to safeguard that. A representative from CAMRA (Campaign for Real Ale) felt that what the premises licence holder had done to promote real ale was commendable and the pub was one of the best in the town. It was difficult for pubs to survive in this day and age and part of the income came from entertainment such as bands and karaoke – music was a popular way to bring in customers. Whilst he accepted the review, he did not feel this necessitated the imposition of harsh restrictions and he wanted the outcome to be balanced and fair for residents and the pub. The recommendations put forward by the premises licence holder seemed to be a reasonable adjustment with more acceptable hours so he recommended that be taken into consideration to allow the premises licence holder to continue with a profitable business.

- 8.8 The Chair invited questions of the other persons and a local resident expressed their disappointment that, although reasonable, the recommendations had come late in the day before they had a chance to assess them properly. The local resident asked how many other pubs in the area had outdoor live music and the CAMRA representative advised that he was aware of The Canterbury and the White Bear, which was a pop-up venue with live music inside in the winter and outside in the summer. The landlord from the Nottingham Arms confirmed they also held live music indoors on a Friday and a Sunday. The local resident expressed the view there was a big difference between indoor and outdoor music. The CAMRA representative noted that some measures had already been implemented, for example, acoustic curtains, and it had been stated these were making a difference. This demonstrated that the premises licence holder was willing to address the problem and he felt it would be sensible to assess the noise situation with those measures in place, rather than placing further restrictions on the pub at this stage. The Gloucestershire County Councillor indicated that she had asked to speak neutrally as she had been contacted by residents both in favour of the review and against it. Notwithstanding this, almost everyone who had

contacted her was supportive of the pub and recognised that they lived in the town centre but it was still a residential area. The vast majority did not want the pub to shut, they just wanted compromise – not too loud, too long or too late. Many of those who had objected to the review did not live in close proximity to the pub so she intended to focus on those who lived nearby. Most people wanted to be in their gardens in the summer, and to open windows in their properties, and she supported the garden being closed at 2200 hours. On the other hand, she agreed it was an excellent restoration and was beneficial for the economy, tourism and musicians, particularly post-COVID. She was pleased to hear that any events which were cancelled could be reapplied for and, if the garden was closed, people could still enjoy themselves inside. The premises licence holder should be commended for wanting to compromise – he had already taken steps to address the issues with the smoking area and had shown he could listen. He was welcoming Age UK etc. to the pub which was demonstrative of his ambition for it to become a community pub rather than just somewhere for people to drink. The restoration was expensive and it was not easy for pubs – particularly independent ones – to survive. The Black Bear had been particularly great during Tewkesbury Live where it had made good use of the amazing garden. It would not be possible to please everyone so it was a question of compromise – residents lived in the town centre which could be difficult and it was important for the business to thrive whilst being mindful of residents, for instance, by making the music slightly quieter and the sets slightly shorter.

- 8.9 The premises licence holder's solicitor advised that Ye Olde Black Bear had operated under a premises licence since the Licensing Act 2003 had come into force. The permitted hours for licensable activities under the current premises licence were the same as granted in 2005. The respondent purchased the freehold of the premises in February 2017 and commenced trading in July 2023. The premises was closed during the intervening period to undertake renovation works. The premises was located on the corner of High Street and Mythe Road, adjacent to the roundabout where High Street, Mythe Road and Bredon Road met. As the premises was located on the High Street, it was in close proximity to many other commercial premises in the area including The White Bear Public House, The Boat House and Panache Indian Restaurant. Local residential properties comprised of houses along Mythe Road, Bredon Road and High Street as well as residential properties situated across the river. The premises was 700 years old and rumoured to be one of the oldest pubs in Gloucestershire with notable past customers including William Shakespeare. The premises was subject to a community order to ensure that the premises would remain a public house; whilst that community order was in place, the premises would only be permitted to be a pub. It was a historic premises, restored by the respondent who had modernised its interior, whilst still retaining its historic character, charm and personality. It was difficult to walk into the premises and not be romanced by the unique characteristics, where each wall, door or wooden beam would no doubt have a story to tell. The premises had 700 years of history, involving battles, wars, the plague and an entourage of monarchs and would have seen many first dates, last dates, birthdays, weddings, anniversaries and celebrations of lives. It was also a place where people would have come to seek support from friends and loved ones at times when comfort was needed. First and foremost, it was a 'community pub', which was reflected in the current clientele. As a community venue, the premises was an asset for the community it served which appears to be recognised by the many local residents who have made representations as part of the review. A community venue, by definition, had a wide offering to all members of the local community including those who enjoyed live music. The premises had made a home for charity events as well as hosting music performances, providing a platform for up-and-coming local music talent. Historically, music entertainment was a big part of the premises' offering, which was commonplace for community pubs generally. Entertainment was provided for customers very regularly for many

years, with either discos or karaoke every Friday and Saturday night from approximately 2000 hours until 0100 hours. Provision of entertainment had therefore been a frequent and significant offering at the premises for many years and an important part of its amenity to its customers and the community. Whilst performances of music were important to the premises, it was not a “music venue” per se; the premises would very much remain a pub, but one that provided entertainment in the form of music. The premises had been undertaking live and recorded music, which was an unregulated activity under the Licensing Act 2003, by way of the Live Music Act 2012. The respondent was the premises licence holder and designated premises supervisor and had lived in the surrounding area of Tewkesbury for 12 years, residing in Tewkesbury for eight of those years. The respondent had been drawn to the local area by its character and historical charm and was planning to remain there for the future. The respondent’s passion for the town of Tewkesbury was infectious and, as a publican, he had accepted responsibility to serve the community of Tewkesbury and promote the town using his own entrepreneurial and innovative strategies. Upon hearing that the previous owners of the premises, Greene King PLC, had turned the premises into a failing business, he had collected his funds together and bought the premises. He then picked up his tool belt and, with the help of local tradesmen, began working away for six years, to give the premises, and the people of Tewkesbury, the old ‘Bear’ back. Armed with a Heritage Statement about the premises and the premises licence, he began brainstorming and blueprinting a premises and a concept that would celebrate the historic features of the premises and bring back to life the key characteristics that made Ye Olde Black Bear last for over 700 years. Through the premises, his vision was to give the local community a venue that was a social hub and supported all things Tewkesbury, including its local grassroots music talent. The respondent currently employed 35 members of staff at the premises, all of which relied on its success to provide them with income. The respondent also undertook some of the restoration works himself - not only was he financially invested in the premises, he had also invested his heart, soul and spirit. This premises, its staff and the local community were the respondents’ pride and passion and he was today representing all three. Since starting trading at the premises midway through this year, the respondent had done many things right: provided local employment for staff; put on community events which raised money for the local community; hosted charity events for Age UK; and supported local music talent. He had a significant community following, many of whom were in attendance today. Through the premises he had drawn more people to the local community and provided a safe space for them; however, he had not gotten everything right, and there were elements of his operation that required some polishing.

- 8.10 On 19 October 2023, an application to review the premises licence was submitted by the Environmental Health Officer of Tewkesbury Borough Council. The review was based on noise complaints received by local residents regarding noise from the premises but did not cite any breaches of conditions. The review was not seeking revocation of the premises licence, but for a set of conditions to be placed on the licence. It was the respondent’s submission that the conditions proposed by the Environmental Health team in the review were inconsistent with the revised guidance issued under Section 182 of the Licensing Act 2003 as they were inconsistent with the current Operating Schedule; disproportionate; inappropriate; and deterred events that were valuable to the community. The review also requested a set of conditions, which were currently contained on the licence, to be removed. The Environmental Health Officer and the respondent had engaged in a dialogue and agreed on a set of measures which had been circulated to the Sub-Committee; however, there were some remaining issues in terms of conditions 1-3 proposed by the Environmental Health Officer - outdoor regulated entertainment to be limited to six days per year with entertainment ceasing at 22:30 hours; an NMP to be agreed with Environmental Health Officer and to be adhered to at all times;

and that a noise limiting device be installed at the premises for internal music. Just under 300 representations had been received from local residents and businesses opposing the review with 30 in support of the review. The premises also circulated a petition in opposition of the review which, as of 8 December 2023, featured 3,000 signatures in support of the premises. Further letters of support had also been received by the premises. Importantly, included within the representations received in opposition of the review, 20 neighbouring residents who lived in very close proximity to the premises stated they had no issues with the noise emanating from the premises. No other responsible authorities had joined in with the review or submitted communications in support of it; however, Tewkesbury Town Council's Planning Committee had submitted a representation opposing the review. Although the review cited different licensing objectives, the evidence submitted appeared to focus upon the prevention of public nuisance. The most commonly referenced issues were noise arising from the premises: from musical entertainment provided from the pub (internal and external sources); and from customers in external areas. The respondent hoped the Sub-Committee would take into consideration what he had done since the review application had been submitted. It was noted that both the residents and respondent had vested interests in this matter - the residents had wanted to protect their home and the environment in which they lived and the respondent was looking to make a commercial business succeed. The only party without a vested interest in the review was the Environmental Health Officer whose role was to promote the licensing objectives. Page No. 87, Appendix I to the report, gave a summary of the noise recordings provided by the Environmental Health Officer who had confirmed this was an accurate reflection of the recordings he had taken; however, he believed that the recordings had been taken in September rather than October as stated. That being the case, the first recording on 22 September 2024 referred to a lorry emptying bins which was a very impactful and loud sound. On 23 September 2023, there were 14 recordings in total with the recording at 2124 hours clearly audible and a second recording at 2146 hours with no reference of noise being impactful. It was therefore clear that the only impactful noise was on 23 September between 2124 hours and 2146 hours. In terms of the second set of recordings in relation to Oktoberfest, there was no reference to the noise being impactful, only that it was audible which was not the test for nuisance. It was stated that the recordings between 2121 hours and 2354 hours included people noise which was 38.5dB(A) – just above the current noise levels being experienced in the meeting room. As such, two weekends had been recorded, with 17 records taken, and only two referencing impactful noise – 0400 hours on 22 September, for which the respondent had apologised and taken remedial action to prevent deliveries at that time, and, on 23 September, 25 minutes of impactful noise at most. In terms of moving forward, since the review had been submitted, the respondent had implemented robust measures to manage the noise that was generated from the premises, many of which were not conditions of the premises licence, including installation of acoustic curtains in the outside area/exits, and displaying notices around exits, as well as ensuring doors and windows were closed ahead of any performance of music. A noise management process had been implemented which involved the respondent and his staff walking the boundary of the premises and taking sound readings with a handheld device at four locations – two on Mythe Road, one across the road from the premises and one on the High Street. This was done regularly throughout the evening and, if they were deemed to be too high, adjustments were made accordingly. This was all documented on an app and a record was included in the solicitor's exhibit which included images of the device. Furthermore, there was close monitoring of the outside area by an SIA door security staff member on Fridays and Saturdays. Guidance had been sought from local acoustic experts regarding a public address system and curtains and an agreement had been reached so there would be no deliveries or bin collections until after 0700 hours. A policy had also been created

to prevent staff from taking empty barrels from the cellar in the evenings. Since the commencement of the review, the premises has put on 32 music events with very few complaints from local residents. When a concern had been communicated to the premises, appropriate action had been undertaken to remedy. Furthermore, after installing the acoustic curtains in the outdoor area, the respondent had received positive feedback from local residents. The respondent was complying with the current enforceable conditions contained on the premises licence and had been operating without further enforcement action being taken. He had offered further and/or enhanced measures as part of the review to manage the noise emanating from the premises such as the rear area now including additional seating, which was its primary function. Customers were not permitted to consume food or drink in the external area after 2300 hours, but smoking was permitted within a designated smoking area after this time. The external area was also the only access to the toilets. Front and rear external areas had appropriate signage leading to them, and between Sundays and Thursdays, regular checks of the rear external areas were undertaken by staff with SIA door staff monitoring the external areas on Fridays and Saturdays and documenting this using the same app which was used for the sound recordings. The solicitor pointed out that this review was primarily about conditions - neither the Environmental Health Officer nor the opposing residents had requested for the licence to be revoked; however, any remaining conditions being proposed by the Environmental Health Officer would create extreme financial hardship if imposed, which could be fatal. Members were reminded that any decision of the Licensing Sub-Committee must be made in the wider public interest for the promotion of the licensing objectives. The general principle of the wider community public benefit was emphasised in the Section 182 guidance which, although in reference to prevention of crime, was also applicable to nuisance. The wider community included the operators of licensed premises, their patrons, and the many neighbours that did not raise objections. It was reiterated that 300 representations were in support of the premises and 3,000 people had signed a petition to that effect. From the earliest iterations of the Section 182 guidance the scope of the Sub-Committee has been clearly defined: *"Licensing functions under the Act are only one means of promoting the delivery of the objectives described. They can make a substantial contribution in relation to licensed premises but are not the panacea for all community problems."* Section 10.10 of the guidance set out that the 2003 Act required that licensing conditions should be tailored to the size, type, location and characteristics of activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignored those individual aspects should be avoided. Section 1.2 of the guidance indicated that the legislation provided a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions were undertaken; however, section 1.5 set out that the legislation also supported a number of other key aims and purposes which were vitally important and should be principal aims for everyone involved in licensing work. These included recognising the important role which pubs and other licensed premises played in local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises, and encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them. Section 1.16 set out that conditions on a premises licence or club premises certificate were important in setting the parameters within which premises could lawfully operate. Licence conditions must be appropriate for the promotion of the licensing objectives; must be precise and enforceable; must be unambiguous and clear in what they intended to achieve; must be tailored to the individual type, location and characteristics of the premises and events concerned; should not be standardised and may be unlawful when it cannot be demonstrated that they were appropriate for the promotion of the licensing objectives in an individual case; should not replicate offences set out in the 2003 Act or other

legislation; should be proportionate, justifiable and be capable of being met. Section 2.17 stated that conditions relating to noise nuisance would usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows were kept closed after a particular time, or persons not being permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate; however, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself was not licensable. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that were valuable to the community, such as live music. Noise limiters, for example, were expensive to purchase and install and likely to be a considerable burden for smaller venues. In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to the steps that were appropriate to promote the licensing objectives; the representations presented by all the parties; the guidance; and the Council's statement of licensing policy.

- 8.11 In terms of condition 1 as proposed by the Environmental Health Officer, the premises licence holder's solicitor indicated that the current state of play meant the premises could operate live music in the outdoor area 365 days per year. The Environmental Health Officer was proposing a reduction of 98.4%, down to 1.6%, which would have a dramatic - potentially fatal - impact on the summer trade. This was not limited to music and related to all regulated activities including films, boxing and other sporting events. A variety of events of different sizes were held in the outdoor area, which all had different risks in terms of promotion of the licensing objectives and this needed to be proportioned accordingly. 98.4% was a significant reduction and there was no evidence to demonstrate how that had been arrived at. Over 20 local residents who lived in very close proximity had no issues with the noise generated from the premises so this was an excessive measure which did not follow the Section 182 guidance in relation to proportionality and would affect the premises licence holder's ability to put on community events such as Tewkesbury Live. Temporary Events Notices (TENs) would allow the premises to deviate from what the licence specified, on occasion, but if there was a downpour and the event was cancelled, the TEN was lost. In terms of the second condition, he advised that the premises licence holder was not opposed to an NMP but objected to it being produced by an acoustics expert and the Environmental Health Officer. The premises had held 32 music events since the review application had been submitted with no formal complaints and no enforcement action and there had been positive comments from residents to say the measures appeared to be working so the premises licence holder had a good grasp of how to control music from the premises. With regard to condition 3, he made reference to 2.17 of the guidance in terms of disproportionality. The music was set at a certain level and was assessed and adjusted accordingly by staff so a noise limiter was not required to control the music and this had been demonstrated by the 32 events held since 19 October.
- 8.12 The premises licence holder's solicitor referred to the measures proposed by the respondent which had been circulated to the Sub-Committee and confirmed there were 12 in total, several of which had been agreed with the Environmental Health Officer. He explained that different types of event had been risk assessed and broken down into standard performances – those with four or less performers and/or before an audience of less than 300 people – and community events, such as Tewkesbury Live, which would be limited to six per calendar year and would not be held in the same month as each other. An acoustic expert would be enlisted to

assist with community events as there was a higher level of risk than an ordinary outdoor performance. For standard performances, it was still proposed to have sound checks and a NMP prepared by the premises licence holder. There had been further discussions between the Environmental Health Officer and the respondent regarding standard performances being limited to between 1 May and 30 September, a period of 66 days and 22 weekends. There would inevitably be situations where events could not be held outside due to the weather and the framework proposed would allow some to be moved or cancelled, if necessary, without the need to apply for TENs. A reduction of hours was also proposed with amplified music to cease at 2230 hours on Fridays and Saturdays and 2130 hours on Sundays in line with the Environmental Health Officer's proposal. There would be a limit on the duration of performances with this being no more than two hours on Fridays and Sundays, and no more than four hours on Saturdays. They were supportive of the Environmental Health Officer's alternative proposal for the outdoor smoking area to remain in its current location but objected to checks being carried out every 10 minutes and instead proposed checks every 60 minutes to allow flexibility and reduce the chance of breaching the condition. It was felt these conditions were reflective of the 32 occasions the premises had held music events since 19 October and focused on controlling noise and nuisance. In their view, if nuisance did not exist, there was no limit on the number of events which could be held; the music could be controlled, as it had on 32 occasions already, and would continue to be with the measures that had been put in place by the premises licence holder. In summary, the respondent was a responsible operator and community was at the heart of the operation. He had responded to adverse comments made and undertaken measures to mitigate noise and reduce nuisance. No other responsible authorities had made representations and there had been significant representations from the local community in support of the premises. Commitments to addressing the issues raised had been put forward by the respondent to be formalised by way of conditions to be placed on the premises licence; however, the Environmental Health Officer had proposed conditions which were beyond the spirit of the Section 182 guidance, disproportionate, inappropriate and did not promote the licensing objectives. He asked the Sub-Committee to take into consideration the positive feedback from the community and support given to the premises and adopt the conditions put forward by the respondent.

- 8.13 A Member asked how many people could fit in the venue and was advised it could hold 200 people inside, as governed by the fire risk assessment. Externally there was no limit and the premises licence holder confirmed the maximum outdoor capacity was in the region of 500 people but a limit of 300 was being suggested. The premises licence holder's solicitor indicated that deregulation of live and recorded music was 500 – beyond that it became a regulated activity. The Member sought clarification as to whether the 32 events held since 19 October had been indoor or outdoor and was advised they were all internal events. Another Member asked whether the staff would be patrolling the outdoor area on a routine basis, or as and when, and the premises licence holder's solicitor explained that a common sense approach would be taken – if it was busier then patrols would be more frequent to ensure safety. The premises licence holder indicated that there were times during the week when the premises was very quiet and nobody was outside so it was felt that carrying out checks every 10 minutes would be excessive at such times. In terms of the type of outdoor music events being held, a Member asked if these were acoustic rather than amplified and the premises licence holder explained there was a perception of Ibiza style festivals being held when it could just be one person or a duo performing, although it may be amplified. Generally, events were not of the same scale as Tewkesbury Live or Oktoberfest which was why those had been set apart and would be subject to different measures. He stressed he was not looking to have raucous crowds on Sunday nights and intended to enhance the experience of customers and make it a nice place to be, not to have banging music playing on all nights of the week. The premises licence

holder's solicitor explained that the condition proposed by the Environmental Health Officer did not work for the style and operation of the premises. In relation to the noise, a Member noted the solicitor had talked at length about the recordings taken by the Environmental Health Officer; she felt that 25 minutes was a fair length of time for something to be at an unacceptable level and asked the premises licence holder's solicitor whether he agreed. In response, the premises licence holder's solicitor clarified that the recordings were taken over two weekends for a lengthy period but it was only 25 minutes of the whole period where the noise was deemed to be impactful. A Member sought clarification as to the situation with TENs being cancelled on the day and the Licensing Team Leader explained that, under legislation the entitlement was lost if an event was cancelled but Tewkesbury Borough Council was flexible so, if they received notification of a cancellation, they would allow it to be used on another date, subject to the statutory consultation period.

- 8.14 The Chair invited the other parties present to ask questions of the premises licence holder. A local resident sought clarification as to whether the community events would be in addition to the 66 days between May and September and was advised that the community events would be encapsulated within the 66 days. The local resident asked whether the restrictions referenced in terms of the length of time music could be played related to community events or standard performances and was informed the community events were a different type of event and the restrictions would not apply in terms of the length of performances. Clarification was sought as to how many community events were being asked for and was advised there would be six throughout the year as a maximum – Tewkesbury Live was three days so that would be deducted from the 66 days. The premises licence holder stressed that Tewkesbury Live was held across the whole town – as the Black Bear held this outside, it had one of the earliest finish times as people had to be out of the garden by 2300 hours as standard, with music not going on beyond 2230 hours. He needed an allowance for time to get people out of the garden. The Licensing Team Leader noted that six community events were being requested and that there would be no more than one in any month; however, given the period being requested was 66 days between 1 May and 30 September, that would mean only five community events could be held. In response, the premises licence holder's solicitor confirmed that the community events were subject to the 66 day total but there may be a need to hold one outside of the period 1 May and 30 September. The Gloucestershire County Councillor asked whether the 200 person indoor capacity had been officially assessed and how it was monitored. In response, the premises licence holder advised that the fire regulations legally allowed more than 200 people but that was deemed to be a comfortable level. This was monitored by staff who knew that when it started to reach an uncomfortable level it was getting close to the 200 capacity. The Gloucestershire County Councillor appreciated the pub wanted to hold outdoor events during the summer but raised concern that what was being proposed meant there could be events, and therefore noise, every weekend during the summer. The premises licence holder's solicitor advised that there was a distinction between noise and nuisance; whilst there was no legal entitlement to complete silence, there was an entitlement to not have nuisance and the proposed measures would allow the pub to play music but not at a level to cause nuisance to residents. The Gloucestershire County Councillor found it misleading to refer to a reduction of 98.4% in terms of outdoor events as the reality was there were not outdoor events 364 days per year. A Ward Councillor for the area drew attention to Pages No. 87-88 of the report and pointed out that the recordings had captured a wide range of sounds that were almost all impactful and distinctive. The premises licence holder's solicitor advised that impactful was the test – loud and distinctive was not necessarily a nuisance and the Environmental Health Officer's notes only referred to two instances where the noise was impactful. The Ward Councillor asked for the definition of a community event and was advised there was no legal definition;

the term had been made up to distinguish between the two types of events held at the premises, community events being the larger scale events such as Tewkesbury Live and Oktoberfest. The premises licence holder advised that events such as Oktoberfest were of huge benefit to the town and community but the cost of holding them was significant; the Black Bear did not charge or hold ticketed events, even on Christmas Eve and New Year's Eve. Public access was first and foremost and they offered coffee/water free of charge if people just wanted to enjoy the entertainment – this was what made it a community event. A local resident indicated that Oktoberfest had been run for the first time that year but should not have taken place at all – the premises licence holder had erected a large marquee without planning permission which had remained up for a month or more. In response, the premises licence holder's solicitor advised that planning permission and planning consent was a matter for the Planning Committee and was beyond the scope of this hearing, furthermore, this had not been mentioned in the review. In response to a query as to how the sound would be monitored outside, the premises licence holder's solicitor explained that, following a discussion with the Environmental Health Officer earlier that morning, they would be willing to monitor the sound from five locations, rather than four as originally stated, with an additional monitoring point in the King John's Court area. Measurements were taken using an app and a decibel meter.

8.15 The Chair invited final comments from the parties present. The Licensing Team Leader indicated that whilst she was not acting as a responsible authority, she fully supported the smoking area remaining in its current location rather than bringing it to the front of the premises as there was a duty of care and this would be moving the problem from one area to another. The Environmental Health Officer felt it was important to emphasise that a review would not have been called if there was not considered to be sufficient evidence or a significant impact on local residents. There had rightly been a lot of discussion in relation to his notes on the recordings but the review had not been called based on 25 minutes of excessive noise, it was about the wider picture and the impact on residents. Tewkesbury Live had not been taken into consideration when the review application was compiled as it was a separate event throughout the whole town so it would not be fair to include it. In the lead up to the review there had been little communication from the premises licence holder so he had only heard second hand about the mitigation measures that had been put in place. It had taken the review process to get full engagement from the premises licence holder and although some conditions had now been agreed, he remained concerned there would continue to be a noise issue even with those. A Ward Councillor for the area expressed the view there was little consideration for neighbouring residents by expecting them to put up with events on a Friday, Saturday and Sunday every weekend for five months. In his opinion this was unacceptable and he felt the conditions proposed by the Environmental Health Officer were more appropriate. The Gloucestershire County Councillor indicated that she simply asked for compassion and compromise between a thriving business and the local residents.

8.16 In summing up, the premises licence holder explained he was a proud landlord of the Black Bear and had roots in the town since the age of 16 – he had a deep love of Tewkesbury, and when his family had taken ownership of the premises to restore its place in the town, he was determined not to let history repeat itself. He wanted the Black Bear to be a community pub and a building which people would come to for the product and the atmosphere and live music was an integral part of that; this could not be replicated with a DJ or disco. Live music, and the location next to the river, was what set the pub apart. He admitted that things had not been perfect since opening, particularly in terms of the noise experienced by neighbouring residents, but he had actively sought feedback and visited their homes and his team worked tirelessly to enhance the day to day operation. He reiterated that 32 events had been held without a single complaint since

submission of the review application and he was committed to avoid any future appearance before the Sub-Committee. As a pub there would always be competition, from neighbouring pubs and those in Cheltenham, Gloucester and surrounding areas which had numerous outdoor events. The Black Bear was one of the only outside green spaces in the centre of town and it was not just about the pub but the vision for Tewkesbury as a whole, and the opportunity to demonstrate that the town welcomed the hospitality industry and was open to change. With the Sub-Committee's support, the Black Bear could be a catalyst for positive change which went beyond the pub. The premises licence holder's solicitor reiterated there had been no involvement from other responsible authorities in the review, noise management processes had been implemented and no complaints had been received after the review had been submitted. The premises licence holder was a responsible operator with equal support from residents in close proximity to the premises as well as community support. The proposed measures from the Environmental Health Officer did not follow Section 182 guidance and the measures put forward by the respondent were more appropriate to the different levels of risk associated with the music, whilst allowing for flexibility with the performances and the British weather. The premises licence holder did not wish to be in front of the Sub-Committee again and the current permitted allowance had been reduced by 82% with the hours being reduced to 2230 hours, and 2130 hours on Sundays, as well as enhanced measures being introduced to control music from the premises. He invited the Sub-Committee to continue to support the premises and the local community and to help keep the tunes playing in Tewkesbury.

- 8.17 The Chair thanked everyone for their attendance and contributions. He indicated that the Sub-Committee would now retire to make its decision which would be published within five working days.

[NB - decision notice attached at Appendix 1 to these Minutes].

The meeting closed at 2:00 pm

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 Schelvis, 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.