



NORWICH
City Council

Notice of Determination

Date of Committee: 18th April 2019

Licence type: Review of a premises licence

Applicant for review: Environmental Protection Team, Norwich City Council

Premises reviewed: Bermuda Bobs, 7A Timberhill, Norwich, Norfolk NR1 3JZ

Members of Licensing Sub-Committee: Councillors Hugo Malik (Chair); Julie Brociek-Coulton and David Fullman.

Other Persons Present: Jackson Swallow, Andy Custerton, Stuart Shirra, Jo Baxter, Mike Baxter (Owner), Susan Shredder, Mark Shredder, David Hannant (Press), Senam Ahadzi, Theo Gordon, Ollie Drew, Sherie Cutter and Phillip Cutter (occupiers of Murderers/Gardeners Arms Public House) Alexander Oliver, Ben Street, Lara Emerson (Planning Department, Norwich City Council), Richard Divey (for applicant for review), Richard Vivian (Bermuda Bobs noise expert), Gavin Tempest, Robert Sutherland and Marcus Lavell (all for Bermuda Bobs), Jill Watkinson, Edward Watkinson, Monica Jezewska, Levi de Belgeonne, Brad Baxter (Owner), Rikki James, Joanne Millington, Michelle Bartram (Norfolk Police), Neil Tweddle, Paul Frack, A.R. Turner, Tamra Baxter, Adrian Cooke, and Jack Andrews. In addition Mr Anthony Shearman (Environmental Protection, Licensing and Markets Manager, Norwich City Council) and Mr D Lowens, clerk, were present.

There were no declarations of interest.

NOTES OF HEARING:

Prior to the start of committee papers were circulated from the premises licence holder being a technical memorandum from Richard Vivian, a witness statement of Bradley Baxter, a copy of Bermuda Bobs Noise Policy and a business and licensing compliance assessment from Gavin Tempest.

Councillor Fullman declared a non-pecuniary interest, being involved with the charity that owns the Murderers/Gardeners Arms Public House.

Councillor Malik outlined the procedure to be followed during the hearing and Mr Shearman presented the report noting that the review was under the ground of the prevention of public nuisance. Mr Shearman mentioned that there was an agreement between the applicant for the review and the premises licence holder as to conditions that both deemed appropriate and the Environmental Protection Team had nothing further to add to those conditions. It was noted that many of the representations made in support of the reviewed premises contained comments that were not relevant under any of the four licensing objectives.

Committee were informed by the clerk that planning status was not a relevant consideration for the review, the two control systems operating independently, and the clerk suggested that the comment from the planning team insufficiently addressed any of the four licensing objectives.

Richard Divey addressed the committee giving a history of the premises including the previous justices licence being transferred to the status of a premises licence following the introduction of the Licensing Act 2003. At that time the premises were operated as a private members club and caused limited noise. In 2016 the Environmental Protection Team needed to give advice to the manager of the premises, then called The Owl Sanctuary. Live music was reduced to end at 2300 hours, recorded music hours were retained with the intention that they would be occasionally used.

Complaints from residents occurred in November 2018 and there had been negotiations with the venue to ensure the conditions proposed are introduced to deal with concerns relating to amplified noise. Mr Divey read out the list of conditions that had been agreed between the Environmental Protection Team and the premises licence holder.

Mr Divey explained to committee that in summary these proposed conditions meant that up to 2300 hours sound equipment need not be connected to the sound limitation device but afterwards sound equipment must be run via a sound limitation device.

It was confirmed that internal doors at the premises are already self-closing.

Mr Divey confirmed the noise limiter would limit the overall noise and there would be a secondary channel connected that would take effect upon the fire door opening.

Mr Baxter confirmed that the premises had no objection to the fitting of such a device. Regarding air conditioning this was being investigated and the premises were looking to install air conditioning in the summer.

Mr Divey was questioned by the premises licence holder and confirmed that a noise abatement notice served upon the premises is to be withdrawn and he confirmed his understanding that the current conditions were not effective in that problems have been caused due to noise escaping. Persons gathering outside were also relevant to the changed conditions but Mr Divey noted that the behaviour of persons outside the premises were not the reason for this review and he felt that issues with persons outside the premises did not merit bringing a review.

Mr Cutter addressed committee noting that Timberhill at midnight was generally a quiet area and he felt a licence being used at 3.00 a.m. was inappropriate for this area. There had been difficulties with communication with the current management and Mr Cutter felt that the management of Bermuda Bobs were unwilling to compromise and were down-playing the nuisance being caused by DJ's. In his view door staff of the premises were unable or were unwilling to control their customers in the street when customers left the venue at 3.00 a.m. resulting in himself and his family having their sleep disturbed and their complaints were being ignored by the door staff. His son had been woken up, up to three times per week and significant sums had been spent on hotel accommodation in order to leave the area and get some sleep at the weekend. Mr Cutter noted that Norwich City Council had served a noise abatement notice and he noted that inflammatory comments had been made on social media. As a resident he had no confidence in the management of Bermuda Bobs, they open the doors and they are unwilling to accept noise escape issues. Turning the music off at 3.00 a.m. allowed patrons to flood the area at 3 a.m. and thereby exacerbating the problem of noise nuisance. His own licence was to 2 a.m. but 00:30 a.m. tended to be the closing time.

Mr Cutter was questioned by the premises licence holder regarding the visit of Mr Vivian and confirmed that Mr Vivian visited whilst Mr Cutter was away at a meeting, he had not been told that the sound person was coming and Mr Vivian had been told to leave by his manager. His General Manager asked him to leave because he had not made an appointment. Regarding the noise equipment supplied by the Council this had been placed in the middle bedroom approximately a metre away from the window and on occasions the window had been opened. The window had been opened to show what the noise was likely to be like in the summer. He confirmed that when

the equipment was installed by Mr Divey nothing was mentioned regarding the windows being opened or closed. Mr Divey said this would not affect the specific readings made. Whilst the window was largely open Mr Cutter could not remember the times the window was open.

Mr Cutter took time to read the report from Mr Vivian. Mr Cutter was then questioned by the premises licence holder regarding the contents of the noise report and denied that the microphone had been taken out of the window and denied the microphone had been moved. He agreed an offer of a contribution to double glazing had been made by the premises licence holder but Mr Cutter felt funds would be better spent on their own premises and noted he occupied a listed building.

Mr Cutter was then questioned regarding the matters noted on pages 30 and 31 of the agenda being that of his representation, Mr Cutter confirmed that regarding the new year's eve incident of the four males drinking in the queue he felt that the same individuals should not have been allowed entry for the rest of the evening, regarding the drunk female Mr Cutter noted she had been breathalysed but did not know the result of the breathalyser reading and confirmed that she was refused entry. Regarding the placing of an unconscious individual in the road it was suggested that the person was carried out carefully and staff remained with the individual until the arrival of the SOS bus. Mr Cutter denied this.

The premises licence holder addressed committee and mentioned the Council's duties under the Equality Act 2010. The premises licence holder referred to the additional papers and mentioned the business and licensing compliance assessment carried out by Mr Tempest. Mr Tempest addressed committee regarding the visit noting that he observed searches on entry and visited on a Saturday night for about three hours. Regarding doors being propped open Mr Tempest confirmed that the doors were self-closing and on his visit doors were not propped open. He confirmed he had not told the business when he would be visiting.

Mr Richard Vivian addressed committee regarding his noise analysis and confirmed he had not received all the data he wished from Norwich City Council, he had received twelve five minute, 30 second recordings but no indication of whether things were loud or quiet and therefore his comments were a guess as to what the noise levels were. He noted that in his view the microphone was tampered with which could be a deliberate or accidental disconnection. He noted however that the person would likely be in the room with the microphone as the button had been pushed to operate the machine.

Mr Vivian described his visit to The Murderers when he had been told to leave and had gone to another retail unit instead.

Mr Vivian was questioned by Mr Divey and stated the power supply was disconnected and the microphone re-stabilised.

Mr Vivian was questioned by Mr Cutter regarding whether fire escape doors were open on his visit and confirmed the doors were closed.

Mr Baxter addressed committee noting the premises use the breathalyser test a lot, had attempted an arrangement with a taxi company to ensure they only picked up at the bottom of the hill, and that the premises relied upon its doormen to note when persons were still intoxicated if they attempted to re-visit the premises.

Michelle Bartram for the Norfolk Constabulary addressed committee noting that the venue was not a source of concern under the crime and disorder licensing objective at the moment and on a visit carried out by the police no nuisance had been noted. She confirmed she had seen the CCTV footage of the individual placed in the street and she saw that staff were assisting and the

individual was not just left. Persons waited with the member of the public until the SOS bus arrived.

Mr Baxter was questioned by a Councillor regarding the presence of SIA door staff and confirmed the premises tried to match door staff numbers to how busy they expected to be.

Ben Street addressed committee confirming that he was experienced regarding live music organising and felt the premises were safe and well run and the management was very accommodating when he asked for equipment to be provided.

Mr Cutter addressed committee noting that he did not have a problem with events prior to midnight but wished to sleep after that time and felt the conditions being suggested were too similar to ones already existing which were not being adhered to at the moment. He suggested that a 1.00 a.m. finish for regulated entertainment with a 1.30 a.m. close of the premises would be appropriate and would ensure they did not experience nuisance. He felt the premises significantly underplays the nuisance arising from DJ nights.

The premises licence holder summed up their position noting that an agreed position was before the Council with Mr Divey, the Council's noise expert. The conditions are appropriate and proportionate. The premises had provided documentation showing the standards being operated and the Council had the benefit of independent evidence from the police regarding the behaviour of the management. The premises from the police view is not a concern regarding crime and disorder, the premises licence holder suggested there was no evidence to support the submissions by Mr Cutter that the hours be cut back to 1.00 a.m. and ended by 1.30 a.m. and regarding the noise from persons leaving the premises the premises licence holder noted the representative of the Environmental Protection Team after listening to the recordings made was of the view that people noise is not a problem and would not justify him bringing a review.

DECISION OF COMMITTEE:

The decision of the committee was to impose the conditions that had been agreed between the environmental Protection Team and the premises licence holder, with a minor amendment to condition 3 as follows:

1. A noise limiter must be fitted to the music application system set at such a level so as to ensure that no noise nuisance is caused to local residents or businesses. The setting of the limiter is to be carried out in agreement with the relevant Norwich City Council Environmental Health Service.

The noise limiter shall then be secured and access shall only be by persons authorised by the premises licence holder. The limiter shall not be altered without prior agreement with the Environmental Health Service (such agreement not to be unreasonably withheld). No alteration or modification to any existing sound system should be effected without prior knowledge of an appropriate Council officer. After 2300 hours no additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.

2. The premises shall operate a "wind down period" on the first floor, from 02:30 a.m. until close, daily. From 02:30 a.m. the volume of music played shall be gradually reduced so that by 02:45 a.m. such music can no longer be identified as "regulated entertainment" and by 03:00 a.m. no music is played.
3. The premises shall produce and operate in accordance with a written Dispersal Policy. A copy of such policy shall be lodged with the Council's appropriate Environmental Health Service. The policy shall include, amongst other things, a requirement that the premises actively encourages (through staff, SIA door supervisors and appropriate signage) patrons to leave the

area on exiting the premises and to do so in an orderly and quiet manner having respect for any nearby residents.

4. All internal doors shall be maintained effectively self-closing and not held open save for the immediate passage of persons from one area to another.

5(a) After 2300 hours until the end of licensable activity a device will prevent the playing of, or reduce the noise level of amplified music through the first floor music system if the first floor fire escape door is open, so as to ensure that no noise nuisance is caused to local residents or businesses.

5(b) Where under paragraph 5(a) above the noise level is reduced, a noise limiter must be fitted to the music amplification system and the setting of the limiter is to be carried out in accordance with condition 1 (the noise limiter condition).

Condition 29 of the current licence was removed.

Under sub-section 177A of the Licensing Act 2003 the existing conditions relating to live music, recorded music or both are amended so as to include a statement that section 177A of the Licensing Act 2003 does not apply to those conditions, pursuant to section 177A(3), and in respect of those additional conditions relating to music added to the premises licence these are added to the licence in accordance with section 177A(4) of the Licensing Act 2003.

REASONS FOR THE COMMITTEE'S DECISION:

Committee noted that the concerns raised by the Environmental Protection Team were answered (in the view of that team) by the imposition of conditions that had been agreed between them and the premises licence holder. Committee had no reason to think that these conditions would fail in their intent to ensure that amplified music noise arising from the premises was not a noise nuisance and noted the necessary reduction in noise that would take place if the first-floor fire doors were opened in error. The conditions were felt to be reasonable and proportionate to deal with this area of concern.

There was also concern relating to the behaviour of persons leaving the premises and suggestions that the door staff at the premises were not able to or were unwilling to control noise nuisance. It was noted that Mr Divey's recordings led him to the view that the people noise would not justify him bringing a review, however, it was clear that noise nuisance had taken place in the past and Mr Cutter noting that his family were disturbed to the extent that they had paid for nights to be spent away in a hotel and that his son was woken frequently. There was a written comment from the occupier of the flat above 9 Timber Hill Norwich suggesting criminal behaviour on the premises and that noise nuisance was arising from the opening of the fire doors on the dance floor. Committee noted that there was insufficient evidence under the crime and disorder licensing objective that would justify any action being taken in respect of any alleged drug taking and gave significant weight to the above stated views of the Norfolk Constabulary that the premises were not a concern under this licensing objective. Regarding the opening of the fire doors it was agreed in the witness statement provided that this has occasionally taken place but committee felt that the new conditions should deal with the noise nuisance arising from this source.

The committee gave significant weight to the Environmental Health comments that the conditions to be added and which have been agreed is sufficient to prevent an occurrence of the issue that instigated the review. The proposed conditions should rectify nuisance arising from the opening of the fire doors.

Regarding nuisance from persons leaving the premises the committee finds the premises are well run and notes the police are supportive of this business and the premises are not a concern regarding crime and disorder. An independent view of the CCTV by Michelle Bartram does not support the view of management failing in their duties and committee on balance finds that the door staff are competent regarding the control of patrons and do not find that the door staff are unable or unwilling to control customers. Committee notes the statutory guidance that behaviour of individuals once outside the control of the premises licence holder is a matter for personal responsibility and does not feel it is appropriate in order to support the four licensing objectives (and noting the conditions imposed and agreed) for there to be any reduction in hours as proposed by the local resident.

The committee notes the legal advice that the planning and licensing systems are separate areas of control and felt that the comment from the Planning Team had not adequately focussed on the four licensing objectives.

RIGHTS OF APPEAL:

Rights of appeal are set out in schedule 5 of the Licensing Act 2003. Any person wishing to appeal this decision or any part of it should appeal in writing to the Magistrates Court within 21 days of receiving written notification of the decision appealed against.

Dated this 3rd May 2019