

Notice of Determination in respect of an application for the variation of a premises licence for Roger Hickman's Restaurant, 79 Upper St Giles Street, , Norwich.

Committee date – 10th November 2021 (meeting reconvened from 7th October 2021).

Members of committee present– Councillors Stutely (Chair of committee), Sands(S) and Ackroyd.

List of attendees:

	Name	Role
1	Cllr Ian Stutely	Committee member
2	Cllr Caroline Ackroyd	Committee member
3	Cllr Sue Sands	Committee member
4	Roger Hickman	Applicant
5	Stephen Pickering	Applicant's agent
6	Christopher Gooding	Objector
7	Maxine Fuller	Officer
8	Leonie Burwitz	Officer
9	George Thompson	Press
10	David Lowens	Solicitor, legal advisor

Summary Notes of Hearing

At the start of this reconvened committee an amended plan was distributed replacing that contained within the agenda, and all parties confirmed that they had received and had considered the further comment from Mr Gooding contained in his email responding to the report from Create Consulting Engineers Ltd.

The Chair welcomed those present and confirmed there were no declarations of interest from the councillors and no apologies had been received. The legal advisor to the committee mentioned that he had worked with Mr Gooding in his role as a solicitor advising officers of Norwich City Council. The Chair mentioned that Mr Gooding was an employee of Norwich City Council.

Ms Fuller presented the report.

The legal advisor suggested that no weight should be given to the 2015 local licensing policy.

Mr Pickering addressed committee and gave details of his client's application. The intention was to create a private dining area for a maximum of 16 guests at any one time. Mr Hickman confirmed that his application's proposed operating schedule was amended to include this limitation on numbers.

Mr Pickering noted the lack of any representation from any responsible authority or from any local member of the public other than Mr Gooding. There was no

application for any live or recorded music in this proposed additional area. It was intended for private parties on occasion, access would be via a kitchen with a separated route. Mr Pickering confirmed that his client would be drawing up a noise plan and that a recommendation to keep windows closed would be followed. He suggested that Mr Gooding, living next door to a commercial premise, must accept a certain level of noise. The applicant was aware that he would need to apply for planning consent for this change of use.

Cllr Sands noted a concern with the width of the access as shown on the amended plan, the access shown at the kitchen being 35 cm wide (according to the scale given). Due the need to ensure public safety the committee was adjourned whilst this was investigated by the applicant.

Committee restarted and Mr Pickering informed the committee that the passage to be used by the public varied between 125 cm and 162 cm at its widest point, the room being approx. 3.2 to 3.5 m in width. This was considered satisfactory.

Cllr Ackroyd asked what steps had already been taken to deal with sound disturbance and whether the applicant had checked that the stained-glass window could be removed. Mr Pickering responded that the applicant had been waiting for the results of today's committee before acting, but he believed the stained glass was protected under listing and it was difficult to see how it would be easily altered. Door closers could easily be added.

Cllr Sands asked about an exhaust fan if the toilet window was to remain closed, and Mr Pickering confirmed that a silent extractor fan would be placed there if it was not there already.

The Chair asked whether the works suggested by the noise assessment report prepared by Create Consulting Engineers Limited, reference MT/VL/P21-2421/01, had been investigated and Mr Pickering confirmed the applicant was happy to put in hand any remedial work that was recommended. Committee requested more clarity and Mr Pickering confirmed the applicant would implement the following paragraphs of the noise report prior to the licensable activity proposed by the variation commencing: Paragraphs 5.3, 5.4, 5.7, 5.8, 5.10, 5.11, 5.12, 5.13, 5.14 and 5.15.

Mr Gooding addressed committee, noting his concern with noise nuisance. The previous owner of the application premises had used it as rented accommodation and Mr Gooding had suffered noise nuisance from what was a "party house".

Mr Gooding confirmed that he was concerned that any change of use be accompanied by suitable noise measures. He was not an acoustic expert and was unable to judge the value of the mitigation proposed in the noise report. The Chair said that the licensing and planning processes were separate matters.

Mr Gooding said he could hear the detail of next-door conversations on the landing, less so the dining room.

It was noted that the noise measurements of the report were taken during the day rather than in the evening when noise was likely to be more noticeable.

Mr Pickering was not aware of why a particular time was chosen for noise assessment. He noted the agreement to carry out remedial works and that there would not be a high level of noise as there was no music and the premises would not be run in a noisy fashion.

The Chair noted the report mentioned that works may be satisfactory.

Mr Gooding referred to the comments he had made in the papers sent to committee.

In response to an invitation as to whether the intended use had been taking place Mr Gooding mentioned that whilst closed in the covid emergency the premises had previously been used for private dining. Mr Pickering confirmed that the PLH had applied for approximately five TEN's for the use of the room.

Mr Gooding was asked whether he had suffered nuisance on any of the days covered by the TEN's. He had experienced one of these events, he could hear the noise from the private dining room to 23:00 and he could hear conversations in the corridor and guests leaving the premises. Regarding the level of noise, Mr Gooding said it was difficult to know how the mitigation offered would help. The downstairs corridor had not been dealt with. The amount of noise was what you'd expect at a party. He had needed to turn up the television and had been disturbed by noise from the toilet.

Mr Pickering mentioned that additional mitigation was planned.

Mr Gooding mentioned that he had placed his own noise insulation on the party wall, he felt the insulation was of good effect regarding direct transmission, but he remained concerned regarding flanking noise, with both premises sharing structural beams for example he explained that the noise thus travels around the wall. He suggested that it was not feasible to stop guests talking loudly when leaving a party.

The legal advisor mentioned the effect of s177A Licensing Act 2003 regarding the enforceability of noise conditions.

The Chair thanked those present for their assistance and mentioned that the committee would now consider matters in private.

Members considered their decision in private. The meeting was then reopened to the public for the decision to be given.

Decision of committee

The variation application was granted as requested, except that the hours were reduced from those applied for. Committee imposed the condition that between Sunday and Thursday the premises would close to the public at 23:00 and on those days the last sale of alcohol would be at 22:30.

This is the unanimous decision of committee.

Reasons for the committee's decision

Committee gave weight to the new operating schedule, as during committee the applicant had made the following changes to their operating schedule:

1. Automatic soft door closers will be installed on the front door, on the kitchen door and on the toilet door.
 2. A silent extractor fan will be fitted in the toilet.
 3. Any window in the toilet is to always remain closed.
 4. There will be a maximum of 16 guests in the licensed area sought by the variation.
 5. No background music will be played in the licensed area sought by the variation.
 6. The applicant will investigate a means to insulate the ground floor corridor to reduce noise from that corridor affecting the part of the building currently occupied by Mr Gooding.
7. To carry out the works mentioned in paragraphs 5.3, 5.4, 5.7, 5.8, 5.10, 5.11, 5.12, 5.13, 5.14 and 5.15 of the noise report prior to the licensable activity proposed by the application commencing.

Committee notes that these works specified in the noise report may require the obtaining of other consents under planning and listed building legislation and that where works are given in the alternative it will not be necessary for all alternatives to be provided.

Committee gave weight to these noise mitigation measures, to be introduced prior to the licensable activity commencing under this premises licence, and taking account of the statutory guidance and the written and oral evidence heard committee were of the view that the variation should not introduce inappropriate levels of noise disturbance provided that the hours were also reduced as specified above.

Rights of appeal

Rights of appeal are set out in Schedule 5 of the Licensing Act 2003. Any appeal should be raised with a magistrates' court within 21 days of receipt of the written decision appealed against.



Signed.....Chair, Licensing Sub-Committee.

Dated 3rd December 2021