



NORWICH
City Council

Notice of Determination

Date of Committee: 25th March 2019

Licence type: Review of a premises licence

Applicant for review: Mr Toby Matthews

Premises reviewed: Bond, 27/28 Tombland, Norwich, Norfolk NR3 1RE

Members of Licensing Sub-Committee: Councillors Malik (Chair); Thomas (V) and Maxwell

Other Persons Present: Ms Lauren Cope, Eastern Daily Press; Ms Ann Page, local resident; Ms Michelle Bartram, Norfolk Constabulary; Mr Josef Cannon, Barrister, Advocate for the premises licence holder, Mr Gary Powers, Director and premises owner and operator; Mr Glen Sarabi, designated premises supervisor; Mr Gavin Tempest, Licensing Consultant; Mr Richard Vivian, Acoustician and Mr Marcus Lavell, Barrister; Mr William Mills; Mr Alick Miles, observer, Norwich City Council; Mr Anthony Shearman (Environmental Protection, Licensing and Markets Manager, Norwich City Council); Mr D. Lowens, Solicitor (nplaw - Norfolk County Council).

There were no declarations of interest.

NOTES OF HEARING:

Prior to the start of committee papers had been circulated from the premises licence holder and Mr Matthews circulated a record of his noise record dated 13 July 2018 to 4 August 2018.

Mr Shearman presented the report. In response to a clarification question from a councillor it was agreed that a premises licence for the premises was granted in 2005, Bond took over the premises in 2015 and prior approval under planning legislation was given for the conversion of St Cuthbert's House to flats in 2016.

Mr Matthews addressed committee noting that he was looking for the external area to be closed at midnight and perhaps a little earlier than that on Thursday and Sunday nights. He spoke of a one-sided communication with the premises licence holder and referred to a letter from Bond dated later than that shown in the bundle. His concerns regarding the recycling of glass were now largely resolved following the visit by the Environmental Health Department. Mr Matthews suggested the setting was appropriate for a restaurant rather than a night club and he was significantly affected on Fridays and Saturdays when the licensed premises were likely to be busier than other nights. There were 56 flats in St Cuthbert's House, many near the beer garden and when doors were open music from the premises was noticeable and prevented sleep. He was keen to take a conciliatory approach and thought it was a reasonable requirement for the beer garden to close at midnight. Matters were raucous in the beer garden and noise including laughter was noticeable in the early hours of the morning. In response to a question from a councillor,

Mr Matthews said that when he bought his flat he was unaware of the licensed premises and that he was not informed by the developers of the noise situation. He moved into his premises in January 2018 and whilst the windows were double glazed there was no air conditioning. He confirmed he had not heard noise from the disposal of glass containers recently.

Mr Matthews mentioned that music was a concern with the doors being open. He felt that if the doors were shut the problem could be resolved. He confirmed he could not see any speakers in the outside area and felt the problem was to do with noise arising when the doors were open and did not wish to see any new sound system.

There were no questions to Mr Matthews from the premises licence holder.

Ms Page then addressed the committee, she lived at 24 Princes Street and had been there since 2004. She wanted committee to understand that premises in Tombland were not designed for the containment of noise, was concerned that there was a change of activity to club-like behaviour and noted conditions already on the premises licence number 23 and 24. She felt that if those conditions were observed there may not be a problem from amplified music.

Mr Josef Cannon for the premises licence holder questioned Ms Page as to where the music she had heard came from and her view was that it came from Bond. She confirmed she had tracked it to Bond. Ms Page also mentioned that she had not experienced such a problem since secondary double glazing was installed in her premises in 2017.

The premises licence holder then addressed committee. The premises was a champagne cocktail bar with a whiskey bar in the basement. It was open late but only had a maximum 140 total capacity and no dance floor. The premises was definitely not a club in the sense that was commonly understood by that word.

Prior to the premises being Bond there had been a significantly different venue, a music and dance led venue called Bam Bam with large speakers. A refurbishment of £80,000 had taken place. Opening hours and days were discussed. There had not been a previous review of the premises licence.

The premises licence holder referred to the Big Sky Acoustics document and invited committee to impose a condition regarding the noise management plan contained in the papers.

The premises licence holder noted the satisfactory inspection visit of Mr Gavin Tempest and the evidence of the designated premises supervisor and noted that neighbouring businesses had external spaces in the same area and both Bar 11 and Copa Cobana produced noise due to the nature of their business.

The premises licence holder noted that the terrace at Bond was at ground floor level and noted some correspondence in the review paperwork indicating possible confusion as to the location of noise and disturbance, with persons referring to a roof terrace.

The premises licence holder mentioned the outside area is a popular and important part of the business and vital to the offer made to customers. Any removal of use of the outside area would have a serious impact on the business. The area was also used for smoking

and persons who were obliged to smoke outside at the front of the premises adjacent to the taxi rank were likely to be less easily managed. The premises do not have outside speakers and had already erected signage regarding noise. The premises licence holder invited committee to note the lack of concerns from the Environmental Health department and suggested that if the Environmental Health department was concerned regarding noise a representation would have been made.

The premises were well run by a careful operator who had paid for noise consultant advice and also asked Mr Gavin Tempest to review the premises and confirmed that Mr Tempest's recommendations had been followed. It was noted that Bond did not permit karaoke on a balcony as was mentioned in one representation.

Mr Matthews questioned the premises licence holder in relation to the level of communication that had taken place.

Mr D Lowens gave committee an outline of the procedure to be followed in their determination.

Mr Matthews summed up his case, noting that a 2.00 a.m. use of the beer garden was not acceptable due to the noise disturbance being caused to him and others. Ms Page also spoke to committee and then the premises licence holder summed up, suggesting it was appropriate and proportionate for the committee to tighten up the use of the outside area by the proposals contained in the noise policy, that removal of the outside area would severely damage the offering of the business, noted letters of support, noted that this was a good and professionally operated business and felt that the proposed controls struck the right balance to allow the use to continue whilst not overly disturbing local residents choosing to live in the city centre.

DECISION OF COMMITTEE:

To take no action other than to impose a condition supporting the noise management and dispersal policies as below with minor rewording of some policies and the removal of some existing conditions which were thus out of date.

The first bullet point was amended to state "any residential property" rather than "all residential properties", the sixth bullet point is amended with the additional words "to be set in agreement with the Environmental Protection Office and is not to be amended without consultation with the Environmental Protection Office of Norwich City Council" and the tenth bullet point is amended to add "the licensed premises" after the word "outside".

The following condition was imposed:

The premises shall produce and adhere to noise management and dispersal policies. A copy of these noise management and disbursement policies shall be lodged with the Licensing Authority and Environmental Health Service teams of Norwich City Council. The premises licence holder shall comply with the critical points mentioned in the current noise management plan and in the current dispersal plan as lodged with the Norwich City Council and will not amend either without consultation with the Environmental Health Service of Norwich City Council.

The committee ordered in accordance with section 177A of the Licensing Act 2003 that in respect of those existing and new conditions dealing with live music, recorded music or both and including relevant noise management policy critical points, section 177A does not apply and added controls relating to music are added pursuant to section 177A(4).

Existing conditions 16, 19 and 24 are removed, being addressed within the current noise management plan.

REASONS:

Committee has attempted to establish the causes of concern, has considered remedial action directed at those causes and on review of the powers available has attempted to ensure that actions taken are no more than an appropriate and proportionate response to the specific concerns regarding the licensing objective of the prevention of public nuisance. The committee have had the benefit of hearing from two residents including the applicant for the review and experts instructed by the premises licence holder. Committee has reviewed the written representations made by those who have not attended committee, noting these complaints relate to loud music from the premises and noise from the exterior courtyard, especially in the early hours of the morning together with the emptying of glass containers.

Committee notes the police have no complaints of noise linked to Bond within the last 12 months and that the Environmental Health Department have made no representation. Committee has proceeded on the basis that if the Environmental Department were aware of any significant amplified noise issues they would have responded to the review papers.

Issues of concern no longer concern the disposal of glasses, the applicant for the review saying that this has largely been resolved.

The committee has noted the completed log sheet of Mr Matthews from 13 July 2018 to 4 August 2018 and notes complaints relate to noisy persons in the garden area disturbing sleep at various times, the latest being 2.00 a.m. and windows needing to be shut to stop the noise and smell of alcohol.

Regarding loud music arising from within the premises the committee has heard there are no external speakers, the noise policy mentions no regulated entertainment is to take place outside the building, the doors and windows are proposed to be closed save for ingress and egress after 21:00 hours and there is the proposed control of the sound system which is to be set to a pre-set maximum level in agreement with the Environmental Protection Office and is not to be amended without the written consent of the Environmental Protection Office of Norwich City Council. Committee believes the above obligations should be sufficient to control this issue and feels that no further remedial action is required by committee.

Regarding noise from persons using the external area this area is said to be a vital and integral part of the business.

Committee has considered what action is appropriate and proportionate.

The proposed noise management policy states that noise emanating from the premises will not cause a nuisance to any residential property, that the garden courtyard area is to

be monitored during regular security patrols and that noisy behaviour will not be tolerated in the rear courtyard. Noting that the premises are well run with no responsible authority raising any concerns regarding the behaviour or control of the management of these premises, it is felt that it is appropriate for customer noise to be controlled in the ways set out in the noise management policy, accepting that a level of noise is inevitable in a city centre location. It is felt disproportionate as at the date of this review hearing to prohibit the use of the outside area in the early hours of the morning.

RIGHTS OF APPEAL:

Rights of appeal are set out in Schedule 5 to the Licensing Act 2003 and reference should be made to that schedule. Any person wishing to exercise their rights of appeal need to do so by raising an appeal at a Magistrates' Court within 21 days of the date on which they received written details of the decision to be appealed against.

Dated this 27th March 2019