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# Minutes

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## Licensing Sub-Committee Monday, 4th October, 2021

### Membership/Attendance

Cllr Barber  
Cllr Bridge

Cllr Mynott

### Substitute Present

### Also Present

### Officers Present

Paul Adams	-	Principal Licensing Officer
Dave Leonard	-	Licensing Officer
Josef Cannon	-	Legal Representative
Zoe Borman	-	Governance and Member Support Officer

### LIVE BROADCAST

[Live broadcast to start at 10am and available for repeat viewing.](#)

#### 147. Appointment of Chair

Members **RESOLVED** that Cllr Bridge would Chair the meeting.

#### 148. Administrative Function

Members were respectfully reminded that, in determining the matters listed below, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-Committee and the rules of natural justice would apply.

**149. Licensing Sub-Committee Hearing in respect of an Application to Review a Premises Licence – Licensing Act 2003 BRAVE NELSON, 138 WOODMAN ROAD, WARLEY CM14 5AL**

An application had been received for a review of the premises licence in respect of Brave Nelson, 138 Woodman Road, Warley CM14 5AL. Eleven relevant representations have been received during the consultation period. The review relates to the Licensing objectives: Prevention of Crime & Disorder and Public Nuisance.

In coming to a determination of the application the Sub-Committee must carry out its function in accordance with the Licensing Act 2003 with a view to promoting the licensing objectives:

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of public nuisance; and
- d. The protection of children from harm

Mr Paul Adams presented the report. The Sub-Committee then heard representations from Mr Leonard of the Licensing Authority, and from residents Ms Strudwick and Mr Palmer.

The Licensee, Mr Duly, was present at the meeting accompanied by his representative, Mr Dadds.

The Sub-Committee considered the application, together with all of the relevant representations submitted, and the submissions made at the hearing including on behalf of the Premises Licence Holder.

The Sub-Committee were concerned to hear that, despite a counter-notice having been issued specifically prohibiting the showing of the England football match on 7 July 2021 where it continued after 10pm, the Premises Licence Holder chose to go ahead and show that match. It accepted the evidence that the premises had been noisy on that occasion. It concluded that this was a breach of the Premises Licence, in that condition 7 of Annex 2 to the Licence prohibits use of the garden area after 2200 save for smoking (limited to 15 people). There appeared to be no dispute that the garden area was being used by more than 15 people after 2200 that day, and not for smoking.

It noted that counsel for the Premises Licence Holder suggested that, as a matter of law, this was not in fact a breach of that condition, on the following basis:

- (a) any sales taking place would have been off-sales, because the garden area was not part of the 'premises';

(b) Section 174F(4) – (6) of the Licensing Act 2003 temporarily varied the licence in that any conditions that would prevent an off-sale prior to 2300 were suspended; and

(c) That applied to condition 7 of annex 2.

The Sub-Committee took legal advice on that submission, and the legal advice was given at the hearing in advance of the opportunity for the Premises Licence Holder to sum up, in order that his counsel could specifically address the advice.

In summary the advice was:

(a) S.172F applied to conditions prohibiting off-sales. It only had any effect where the condition in question prohibited off-sales; that would in turn depend on whether the garden area was (or was not) part of the premises; the plans, and a number of the conditions on the licence, indicated that the garden area was part of the licensed premises (such that sales for consumption there would be on sales, not off sales);

(b) In any event, even if the garden area was not part of the premises and sales for consumption there were off-sales, s.172F(12) operated to mean that the disapplication of such conditions only applied until 2130, when the outside bar was required to cease sales of alcohol. The outside bar was ‘an outdoor area of the premises’ where sales of alcohol were permitted for some, but not all, of the times the Premises Licence authorised sales of alcohol for consumption inside; in those circumstances the Premises were to be treated as ‘not open for the purposes of selling alcohol for consumption on the premises’ after 2130 and the disapplication of conditions did not apply at such times; and

(c) In any event it was common ground that the Premises Licence Holder had not given the requisite notice of his intention to operate the Premises in reliance on the s.172F provisions. The Premises Licence Holder confirmed that he had not taken legal advice on this point until after 7 July 2021.

On the basis of that legal advice the Sub-Committee did not accept that there had been no breach of Condition 7. It noted in particular that despite having the opportunity to do so, counsel for the Premises Licence Holder did not address s.172F(12) in his response at all.

Further, the sub-committee did not accept that this was only a ‘technical’ breach of the requirements of the licence, although it noted that had the TEN been applied for in good time, it may well have been granted, and no breach would have arisen in such circumstances.

The Sub-Committee were also concerned to hear residents’ complaints of noise nuisance arising from the use of the outside area of the premises. That

said, it also noted the absence of a representation from the Environmental Health team, to which it attached considerable weight.

The Sub-Committee considered that the approach taken by the Applicant was in line with the graduated approach to enforcement required in the circumstances, and followed a process of informal engagement with the Premises Licence Holder as detailed in the application; and did not consider that bringing a review application was inappropriate or hasty. In particular they noted that the review application did not suggest revocation or suspension of the licence.

In all the circumstances the Sub-Committee considered it appropriate to modify the conditions of the licence as set out below. In particular:

- (a) The issue of noise breakout from use of the garden area was of concern, and a professional assessment of the implications and potential for mitigation was appropriate and had the potential to assist in minimising any nuisance from noise. For that reason, they imposed a requirement to produce a Noise Management Plan.
- (b) They were concerned that the effect of the recent development in the garden area had the effect of reducing the coverage of the CCTV system and wished to ensure that the CCTV system remained comprehensive in its coverage of the licensed premises.
- (c) They considered that the member of staff presently required to monitor the garden and car park could also appropriately be required to monitor the street frontage to the premises, where there was some evidence of noise and /or anti-social behaviour, and where a staff presence could help with minimising such activity.
- (d) The issue had arisen here because a football match had gone to extra time, and as such extended beyond the time at which the garden should be closed and cleared. The Sub-Committee considered that had the Premises Licence Holder sought to close the garden at 2200 in such circumstances there was a potential for disorder; they thus considered it appropriate to impose a condition meaning that where any sporting event foreseeably likely to continue beyond 2200 is intended to be shown in the outside area, a Temporary Event Notice would have to be issued in order to authorise showing it at all.

For those reasons the Sub-Committee considered it appropriate for the promotion of the licensing objectives to impose the following conditions:

1. "The premises licence holder shall commission a Noise Management Plan, to be produced by a suitably qualified and experienced noise control consultant

(e.g. a member of the Institute of Acoustics, or other such person agreed with the Licensing Authority), which Report shall address the necessary measures for noise control and preventing public nuisance from noise arising from the external areas of the premises (to include the beer garden shown on the plan attached to the licence), including (where appropriate) arrangements as to noise attenuation and mitigation measures. The Noise Management Plan shall be submitted to the Licensing Authority for approval on or before 4 January 2022, and once approved the premises shall operate in accordance with the provisions of the Noise Management Plan at all times.”

2. Condition 3 of Annex 2 to the licence shall be modified so that it reads as follows: “A comprehensive CCTV system is installed with full recording facilities, such that it covers all inside and outside areas of the premises, including, where temporary enclosures or structures are in situ, the internal areas of those enclosures or structures. For the avoidance of doubt “all outside areas” includes the beer garden shown on the plan attached to the premises licence.”
3. Condition 8 to Annex 3 of the licence shall be modified so that it reads as follows “One member of staff shall be responsible for monitoring and managing the garden, car park and frontage of the premises to Woodman Road, at all times the premises is open and until the last customer leaves the premises.”
4. No sporting event shall be shown in any outside area where that event could foreseeably finish (for example, after any extra or added time and/or penalties) after 2200.

The meeting concluded at 14:50

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