

STEVENAGE BOROUGH COUNCIL

LICENSING COMMITTEE MINUTES

Date: Friday, 10 March 2023

Time: 10.00am

Place: Autun Room - Daneshill House, Danestrete

Present: Councillors: Maureen McKay (Chair), Loraine Rossati (Vice-Chair), Myla Arceno, Bret Facey and Graham Snell.

Start / End Time: Start Time: 10.00am
End Time: 1.46pm

1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were submitted on behalf of Councillors Rob Broom, Nazmin Chowdhury, John Duncan, Liz Harrington, Chris Howells, Graham Lawrence CC, Lin Martin-Haugh, Andy McGuinness and Claire Parris.

There were no declarations of interest.

2 MINUTES - 12 JANUARY 2023

It was **RESOLVED** that the Minutes of the meeting of the Licensing Committee held on 12 January 2023 be approved as a correct record and signed by the Chair.

3 LICENSING APPLICATIONS - PROCEDURE

All parties noted the revised procedure for the hearing which had been circulated at the meeting.

4 APPLICATION TO VARY A PREMISES LICENCE - TRANQUIL TURTLE

The Committee considered an application for the variation of the premises licence relating to the Tranquil Turtle, Symonds Green Lane, Stevenage. Representations in respect of this application had been made by the SBC Planning Department (Responsible Authority), SBC Environmental Health Department (Responsible Authority), and ten members of the public living in the vicinity of the application site.

The Licensing Officer presented a report to the Committee outlining the facts of the variation application.

The Licensing Officer advised that the variation proposed an amendment to the layout, in accordance with the submitted plan. The main changes included new fencing, temporary scaffolding (including a cover over part of the external area), reconfiguration of the external area to include the external (drinks) servery, fixed seating, and the locations of fire equipment. There were no proposed changes to

the hours of operation nor the hours during which licensable activities could take place.

The Licensing Officer stated that the Premises Licence currently in place permitted licensable activities, including the sale of alcohol and the playing of recorded music, to take place both inside the premises and in the outside area. As a result of the de-regulation of the Licensing Act 2003 by the Live Music Act 2012, no permission/licence was required for a performance of amplified live or recorded music between 08.00hrs and 23.00hrs on any day on a premises authorised to sell alcohol for consumption on those premises, provided that the audience did not exceed 500 people. Therefore, any existing licence conditions which related to live or recorded music remained in place, but were suspended during these times.

The Licensing Officer explained that The Tranquil Turtle had been subject to multiple complaints relating to noise and public nuisance over the last 6 months. On 7 August 2022, the premises held an Ibiza music event outside which went on until 23.00hrs. Twenty noise complaints were received by Environmental Health and licensing from residents and Noise App recordings were provided. Both Licensing and Environmental Health officers visited the premises on 10 August 2022 to remind the Tenant and his team of their duty to promote the four licensing objectives as, although they had been working within the conditions and timings on their licence, they had not sufficiently managed the noise levels for this event. The Licensing Team was aware that calls were made to the Police regarding the noise levels at the event.

The Committee was informed that Licensing and Environmental Health officers had visited the premises again on 13 October 2022, following the receipt of multiple complaints from local residents with regards to an outside music event which was held on 8 October 2022. Reports were received from residents living ¼ mile from the premises complaining of excessive noise, and some residents expressed concerns that the premises was operating beyond the remit of its licence, stating that the music had continued outside until 01.30hrs. The Tenant confirmed that guests were taken inside at 23.00hrs and that entertainment had continued inside. He said that customers were dispersed, and the premises closed at 01.30hrs, except for staff who were cleaning up. The Licensing Team was aware that calls were made to the Police regarding the noise levels at this event.

The Committee was further informed that during the meeting on 13 October 2022, the Licensing Officer had observed some substantial changes to the structure and layout of the premises and the addition of a scaffold style structure and outside bar. This amounted to a change to the plan attached to the premises licence, and which required the submission of a variation application (the subject of the hearing).

The Licensing Officer commented that, whilst carrying out investigations into the complaints received, it had come to his attention that there were three licensing conditions which were in place which were currently not shown on the premises licence for the Tranquil Turtle, and that this had appeared to have been the case since the granting of the licence following the variation application in October 2021. An investigation by the Commercial and Licensing Manager had identified that the omission was due to human error. The three conditions were:

- No external regulated entertainment;
- External background music to be turned off at 21:00 hours; and
- No external drinking after 23:00 hours.

The applicant (Greene King) had been advised of this error, and the three conditions would be re-instated, and an amended licence issued following the result of the hearing.

The Licensing Officer advised that he had undertaken a thorough audit of the premises, the current operation, and the licensing conditions. Despite the omission of the three conditions outlined above, and aside from the requirement for this application for a variation of the Premises Licence, there was no evidence that the licence had been breached, nor the conditions attached to it. All Noise App recordings received with regard to events being held in the outside area seemed to have been recorded prior to 23.00hrs, and therefore conditions relating to music prior to 23.00hrs were not enforceable.

The Licensing Officer stated that the scaffolding erected at the premises had recently been removed, and hence was no longer part of the variation application.

The Chair invited James Chettleburgh (SBC Planning Department) to present his representation to the Committee. Mr Chettleburgh advised that his representation was in relation to the “prevention of public nuisance” licensing objective. He referred to Policy FP7 of the Stevenage Borough Local Plan 2011-2031 (adopted May 2019) which stated that all development proposals should minimise, and where possible, reduce air, water, light and noise pollution. He had concerns, with regard to public nuisance, that the use of the outdoor servery for the sale of alcohol, in conjunction with the fixed outdoor seating area which was to be covered by the scaffolding structure was likely to give rise to a greater public nuisance to nearby residential properties.

Mr Chettleburgh commented that, although the scaffolding structure had now been removed, he was still contemplating whether or not it would be expedient to take planning enforcement action against the unauthorised timber structure (outdoor servery). His concern remained that this area could prove to be a hot-spot for excessive noise and public nuisance.

The Chair invited Christine Walker-Wells (SBC Environmental Health) to present her case. She advised that, since April 2022, Environmental Health had received noise complaints about the Tranquil Turtle from residents living in residential roads in close proximity to the premises.

Ms Walker-Wells referred to an incident on 7 August 2022 when multiple noise complaints were made. The noise recordings taken on that date were clearly very loud and affected the local neighbourhood. However, the determination of a statutory nuisance was made from the complainants’ properties and their living areas. The effect of the noise from the Tranquil Turtle was not witnessed and a nuisance was not determined. Following subsequent visits from Licensing and Environmental Health officers, measures were put in place to control the volume of

escaping noise.

Ms Walker-Wells drew attention to a further multiple noise complaint on 1 October 2022. Following this second incident, the management of the premise developed a Music and Event Agreement, outlining the management's action should the sound system be deemed to be too loud.

Ms Walker-Wells advised that residents had continued to submit Noise App recordings up to the end of January 2023. Most of these recordings had been taken outside, as outside noise (such as road traffic) could be heard. When assessing noise complaints for nuisance, officers would consider the noise experience in the living rooms of a home (and during better weather the garden area). As such, the Tranquil Turtle recordings did not indicate the likelihood of a statutory nuisance being caused by the premises.

Ms Walker-Wells provided details of other occasions when noise monitoring had taken place at the Tranquil Turtle (15 October 2022 and 29 October 2022), as set out in her representation.

Ms Walker-Wells was of the opinion that at certain times of the year when the outside area was in regular use, the Tranquil Turtle may affect residents due to outside noise levels from both music and people noise. In the Spring, Summer and Autumn residents were more likely to have their windows open, enjoy their outdoor garden space, and be adversely affected by noise from the Tranquil Turtle. She considered it possible that a statutory nuisance may therefore be realised. Should the Committee be minded to approve the variation application, she drew attention to three proposed conditions aimed to prevent public nuisance set out in her representation regarding construction of an acoustic fence; the closure of the double doors to the main entrance during opening hours; and the drawing up of a Noise Management Plan for the premises.

Ms Walker-Wells then answered a number of Committee Members' questions.

The Chair invited a number of local residents to present their case. Five local residents amplified their representations, their key points of objection being:

- Numerous noise/public nuisance complaints regarding DJ/music activities taking place at the premises, both indoors and outdoors, since August 2022, both during afternoons and in the evenings;
- The unacceptable construction and adverse impact of the (now removed) scaffolding structure;
- The adverse and unacceptable impact on the Conservation Area and local residents, who had experienced excessive disturbance, especially from bass noise, in their properties and garden areas;
- Promotion of high alcohol intake events, such as bottomless brunches;
- Anti-social behaviour at and outside the premises;
- Inadequacy of parking and unauthorised use of the green for parking, and highway safety issues due to speeding vehicles;
- The Tranquil Turtle had changed from an up-market restaurant to a noisy music, dance and events venue, and was therefore operating outside of the spirit of its

- original licence;
- Relationships between supporters of the venue and local residents were strained, exemplified by the differing opinions in the original social media group relating to the Tranquil Turtle, which had resulted in local residents forming their own group;
- It appeared that the majority of supporters of the venue did not live within the immediate vicinity of the premises and were hence not affected by the noise and disturbance generated by it;
- The adverse effect on local wildlife due to the noise generated by the premises;
- The additional outside seating and outside bar/servery would increase capacity and would add to the level of noise/disturbance;
- The alleged threatening legal letters sent to residents from the premises;
- Residents should not have to endure the level of noise generated at the premises, as the noise was affecting their wellbeing;
- The current use of the premises was more suited to a Leisure Park location; and
- The overriding view that the variation application should be refused.

The local residents responded to a series of questions asked by Members of the Committee.

The Chair then invited the Applicant's representative (Mr Piers Warne) to present their case.

Mr Warne's submission included the following points:

- The Premises operator had endeavoured to create a dialogue with local residents;
- The legal letters referred to were aimed at asking residents to desist from making speculative comments about the solvency of the business;
- The Premises Operator had endeavoured to resurrect the business, as the Crooked Billet had been closed for two years prior to the Tranquil Turtle project;
- The scaffolding had been removed; the Planning issue regarding the outside bar was being dealt with separately; and new fencing had replaced the former rickety fence;
- The request for fixed seating was in an area already licensed for removable seating;
- Reference was made to the 3 conditions offered by applicant in the application relating to control of the external bar servery;
- The application would not add to the licensable area of the premises, and was a variation application not a licence review;
- The Premises Operator had made a significant investment into the premises, and had yet to make a return on that investment;
- It was acknowledged that mistakes had been made regarding the 7 August 2022 event, and things could have been done better in respect of the subsequent events;
- Section 7.1 of the Council's Licensing Policy recognised that events could take place that caused limited disturbance. Sound would be heard in residents' gardens, but the test was one of degree. The Environmental Health Team had not considered that the noise from premises had constituted a statutory

- nuisance;
- The Premises Operator had produced a Garden Management Plan for the premises, as had been circulated to all parties;
 - The possible impact on local wildlife was not an issue for consideration by the Licensing Authority;
 - The Premises Operator had reached out to local residents by offering free Sunday lunches; water bowls for dogs, Santa's Grotto/winter wonderland. He would like to "build bridges" with residents and hold community/family events at the pub;
 - The applicant would be prepared to accept the proposed conditions from Environmental Health regarding closure of the main entrance double doors and the drawing up of a Noise Management Plan. He did not accept the need for an acoustic fence, as these were expensive, and only if there was a definitive need for such a fence; and
 - The Premises Operator was agreeable to the introduction of a complaints log to be kept by the premises, and any residents' complaints logged, together with action proposed to mitigate these complaints. This complaints log would be available at all times for inspection by Council Licensing Officers or another authorised regulator.

Mr Warne and the Premises Operator then answered a series of questions from Responsible Authority representatives, local residents who had made representations, and Members of the Committee.

All parties were invited by the Chair to sum up their submissions.

At the conclusion of the summing up, the Committee withdrew from the meeting to determine the application. At the conclusion of that process, the Committee returned to the meeting to give their decision.

Licensing Committee Chair's statement:

The Committee had heard, loud and clear, the views of local residents. It was very clear to the Committee that noise coming from the Tranquil Turtle had been and continued to be distressing to people living in the vicinity of the premises.

The Committee heard, also, the statement of the Premises Licence Holder, relating to mitigations being put in place to reduce impact of events and patrons on the local community, and changes to the business model.

However, the Licensing Committee had to consider solely the request for a variation of the licence. The Committee had heard from Environmental Health, Planning and Licencing staff, and had taken advice from the Council's legal adviser.

For the benefit of the public, the Chair clarified that there were limitations in law as to the powers of the Licensing Committee to refuse an application. The law favoured the applicant. There was nothing the Committee could do about that.

What the Committee could do was to put the Tranquil Turtle on notice that the Council would be monitoring the complaints over the summer in relation to noise and public nuisance. Should Stevenage Borough Council receive a valid request for a

review from a resident or residents, or a responsible authority, the Committee was able to consider a review of the licence. It would be regrettable, however, should this be necessary.

All of the above notwithstanding, the Licensing Committee **RESOLVED** to approve the application for a variation to the licence, subject to inclusion of the additional licensing conditions as set out in the application, plus the conditions agreed with the Premises Licence Holder relating to keeping the doors closed, the adoption of the noise management policy and the keeping of a complaints log, and the additional conditions omitted from the earlier licence being added. The wording of the conditions being:

1. The external bar servery will only be used between the hours of 11:00 hours and 22:30 hours daily.
2. The external bar servery will be supervised at all times when in use.
3. The external bar servery will be inaccessible to customers when not in use to ensure they do not have access to any alcohol.
4. The management of the premises must ensure that the double doors to the main entrance to be kept closed during opening hours, when not in immediate use (not secured in the open position). If the existing ventilation system is unable to maintain a comfortable temperature during busy periods, consideration should be given to the provision of air conditioning in the bar area (to prevent the breakout of sound from noise generated within the building).
5. A noise management plan should be devised and be put into operation at the premises. This should document all of your measures to minimise the impact of noise affecting noise sensitive premises:
 - Boundary checks for audibility of music and use of the sound system;
 - Control of noise in the car park;
 - Requesting people to leave quietly;
 - Ensuring that windows and doors are kept closed;
 - The use of the garden area;
 - Responding to direct neighbour complaints; and
 - Any other actions that would assist in reducing the possibility of nuisance caused to the surrounding area.
6. A complaints log be kept by the premises, and any residents' complaints logged, together with action proposed to mitigate these complaints. This complaints log to be available at all times for inspection by Council Licensing Officers or another authorised regulator.

7. No external regulated entertainment (omitted from licence following the October 2021 approved variation application).
8. External background music to be turned off at 21:00 hours (omitted from licence following the October 2021 approved variation application).
9. No external drinking after 23:00 hours (omitted from licence following the October 2021 approved variation application).

The Committee did not add a condition relating to acoustic fencing at this time.

5 URGENT PART I BUSINESS

None.

6 EXCLUSION OF PUBLIC AND PRESS

Not required.

7 URGENT PART II BUSINESS

None.

CHAIR