

Decision Licensing Sub Committee on 9 June 2022

Application for the review of the premises licence at Next Door, 8 Bolton Road, Eastbourne, BN21 3JX

The hearing concerned an application for the review of the premises licence at Next Door, 8 Bolton Road, Eastbourne, BN21 3JX. The premises licence was first issued on 28 November 2005. It is currently licensed for sale by retail of alcohol both on and off the premises Monday to Sunday between 10:00hrs and 01:30hrs, and for live music on Sunday between 19:00hrs and 23:00hrs (indoors only) and recorded music Monday to Sunday between 10.00hrs and 02:00hrs (indoors only).

In discharging its functions, the Sub Committee considered the promotion of the licensing objectives, the Council's own Licensing Policy, the Home Office guidance, the relevant legislation, and the rules of natural justice.

The Sub Committee considered the review application made by Environmental Protection, Eastbourne Borough Council, and the oral representation made by Temitayo Olatunji, for Environmental Protection. Environmental Protection, as a Responsible Authority, applied for a review of the licence due to problems with noise principally in the form of music and from customers gathering outside in the front and back gardens of the premises. The application stated that loud noise had been recorded on several occasions at night in April 2022. Temitayo Olatunji stated that the premises licence holder had been warned of the noise problems on several occasions and a Community Protection Warning letter had been issued. Further, that the premises licence holder had been previously warned that a review application may be made if the situation did not improve. He accepted that there were no music speakers in the outside areas of the premises. He stated that there was a music deck, inside the premises, which he believed could be manually controlled by the premises licence holder and/or other staff. He stated that the Applicant was concerned by the lack of sound insulation at the premises. He informed the Sub Committee that excessive noise had been recorded on an app and had also been directly witnessed by Officers of the Council. He accepted that there were three bars in close proximity to each other but was content that excessive noise could be attributed to Next Door bar. He agreed that he had not shared the data from the noise recordings with the premises licence holder as he considered that was inappropriate. In his closing remarks, he stated that the application for the review had been made in consideration of the distress caused to local residents by the excessive noise from the premises and the psychological impact upon them. He stated that there had been, on occasions, thumping music although he accepted that the noise was not a daily problem but that it was noisy generally over the weekends.

Due regard was also given to the written and oral representations of the four representators (local residents). Those concerns related to the licensing objective of the prevention of public nuisance. At the hearing in the oral representations of Stephen King and Michael Knight it was stated that the premises had been converted into a bar disco and that since the premises licence holder had taken over in 2021 the situation had become unbearable with loud music especially from the outside areas. They believed that the music was manually controlled by the premises licence holder and/or other staff as the volume levels varied. Stephen King referred to a photograph of the premises, provided by the licence premise holder at the hearing, which showed the inside of the premises laid out with tables and chairs and said that was a false representation as it was often laid out for vertical drinking and dancing. The representators stated that they

could not sleep due to the noise and this was having an adverse impact on their health and safety. They accepted that the business had the right to operate and they accepted that some noise issues could be expected in a town centre location but that the local residents also had a reasonable right to peace and quiet, and they should not have to live with noise pollution.

The Sub Committee considered the representations made by the premises licence holder, Manasdeep Singh. He stated that Next Door bar had only been opened by him since December 2021 and he contended that he could not be held responsible for noise complaints prior to that time.

He reiterated that there were no speakers in the outside areas of the premises. He stated that he had ordered signs to be put up asking his customers to be quiet and respect neighbours but accepted that they had not yet been put up. When asked a question, if the signs would be displayed without that being a condition on the licence, his response suggested he may not but if conditioned he was willing to display them immediately. He accepted that he could not say that there had been no noise from the premises – “not 100% innocent”. He referred to the fact that there were other bars in close proximity and suggested that the noise could come from the other premises as the app showed only where those making the recording were and not where noise emanated from. He stated that there had been a period, immediately after people were released from the COVID-19 restrictions when more people were going out but that things had calmed down recently.

He disagreed that he could manually change the sound levels on the music and stated that those were automatically controlled and had been set by an expert to industry standards. He contended that he had never been given guidance by the Council as to noise levels or told the decibel levels of the excessive noise. Officers informed the Sub Committee that monitoring noise levels were the responsibility of the premises licence holder.

He stated that his clientele were mainly over 25 years old and that there was a culture of customers being seated. He said it was not a student bar although at a later time in the hearing he stated that his business had been affected by lower numbers of students. He pointed out that he had not received complaints from the Police and that no crimes had occurred at the premises, because he had zero tolerance. He informed the Sub Committee that he was an experienced premises licence holder and had held licences for 18 years.

In answer to a question about what steps he intended to take to improve insulation he stated that it was his long-term plan to provide double or triple glazing to the premises when he was financially able to do so.

He agreed that for some private events the furniture, as depicted in the photograph he had provided, may be removed but contended that the photograph reflected the usual arrangement.

He stated that the front garden was generally only used on a Saturday night and the outside space was quiet on other days of the week. He suggested that the incidents of noise as referred to in the application only related to Saturday nights, but a Member pointed out that was not factually correct. He stated that the back garden had only been used once since December 2021. He contended that if the outside spaces were closed that his customers may smoke outside the front door and he believed there would be less noise if customers were more scattered in the gardens.

He stated that above the premises were two flats and that those residents had never complained about the noise. When asked whether those tenants were connected to Next Door, he denied that was the case.

He stated that the front door was shut after 22:00hrs and only open to customers for entry or exit and this was monitored by the SIA door staff.

He stated that he was sympathetic to the concerns of the local residents and would like to work with them and the Council, but his business had to survive and that would not be possible if the front garden, in particular, were to close at 23.00hrs.

Decision

The Sub Committee decided to modify the licence conditions.

Condition 2 as referred to on page 5 of the Report be changed to “The garden areas at the front (side) and back of the premises shall not be used after 23:00hrs. No music shall be played in the outside areas of the premises.”

Added condition that “Signs shall be placed in prominent positions in the premises asking customers to keep the noise down and that when they exit the premises they do so quietly.”

Added condition that “The front door to the premises shall be kept closed from 22:00hrs until closing time (apart from entry and exit of customers) and the designated premises supervisor and the SIA door staff shall be responsible for ensuring that the door is kept closed.”

Added condition that “All doors should be fitted with adequate seals to minimise noise emanating from the premises”

Added condition that “All windows in the premises shall be kept closed from 22:00hrs until closing time.”

Reasons for the decision

The Sub Committee noted that serious consideration had been given to all options open to it, as outlined in the Report at para. 8.1, including suspension and revocation.

Its decision to modify the conditions as above was considered the most appropriate and proportionate action as the Sub Committee accepted the representations from Environmental Protection and the local residents that the noise from the premises was excessive. The Members fully appreciated the local residents’ concerns and accepted that the noise was having a serious adverse impact upon them. The Sub Committee were, on balance, content that excessive noise had emanated from Next Door bar rather than from other nearby licensed premises, as was suggested by the premises licence holder. The Sub Committee noted that it was accepted by the premises licence holder there may have been some occasions when there was noise from the premises which disturbed local residents.

The Sub Committee took into account, when modifying the conditions, that the premises licence holder had stated that he was willing to work with Environmental Protection and the local residents, but it was unconvinced by his assertions given the lack of positive action taken following the earlier warnings given by Environmental Protection.

Further, in any effort to prevent further noise issues arising from the premises, which may lead to further action on the licence, the Sub Committee would strongly advise the premises licence holder to seek advice from a competent acoustic consultant to prevent noise emanating from the premises. He is referred to the Chartered Institute of Environment Health link <https://www.cieh.org/ehn/consultants-directory/>.

The Licensing Act 2003 provides a right of appeal to the Magistrates' Court. This right of appeal is open to the review applicant, to any person who made a relevant representation and the Licence Holder. An appeal must be commenced by notice of appeal being given by the appellant to the Magistrates' Court within a period of 21 days beginning on the date the appellant is notified in writing of the decision of the Licensing Sub Committee.

The determination of the Licensing Sub Committee will have no effect until the end of the period for the appeal has passed or until the disposal of the appeal.

This decision will be provided to all parties in writing within five working days.