

Decision of Licensing Sub Committee. Hearing 27 June 2024

Application for a variation of a premises licence at Joy Bar, 4 Bolton Road, Eastbourne, BN21 3JX

The hearing concerned an application to vary a premises licence for Joy Bar, 4 Bolton Road, Eastbourne, BN21 3JX.

The application was to extend the sale by retail of alcohol on the ground floor of the premises only on Fridays and Saturdays between 01.30hrs and 03:00hrs (with some seasonal variations as outlined on page 4 of the Report); and extend live and recorded music on the ground floor of the premises only on Fridays and Saturdays between 01.30hrs and 03.00hrs (with some seasonal variations as outlined on page 4 of the Report).

The applicant offered additional conditions to the licence as per page 24 of the Report.

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

It also took into account, the information contained within the Specialist Advisor's report, presented by Jade Marshall.

The Sub Committee considered the application and the oral representations made at the hearing by the applicant's representative. Those were that the premises were in the town centre in a mix of commercial and residential properties. It was noted that the premises were in a row next to two other licensed premises. The applicant's representative noted the applicant was fully aware of the neighbours and their concerns. It was contended that the applicant had taken all reasonable steps to mitigate the impact of the premises on the neighbours including spending a considerable amount of money on a new double-glazed entrance. The representative outlined various policies the applicant had including, but not limited to, crowd control and disposal and drug prevention. The representative noted the side entrance would be the only entrance after 21.00hrs. The representative pointed out that the premises were participating with the Best Bar None scheme and that they had a high score – it was later accepted that the scheme was not directly related to public nuisance. The representative pointed out there was a retractable roof on the outside part of the premises and contended that was generally closed at 23:30hrs.

Members noted the conditions on the licence currently (at page 43 of the Report) included that "background music only to be played in the rear garden until 23:00hrs", that "noise from customers and music should be barely audible before 23:00hrs and inaudible after 23:00hrs at any sensitive premises in the vicinity such as residential properties; responsible trained staff should monitor this", and that "doors leading to the garden should be kept closed apart from allowing ingress and egress after 23:00hrs to avoid the escape of music/noise."

The applicant's representative contended that because there was more than one bar in the area that it was not possible for the representators to know where the noise was coming from and denied the applicant was causing, or would cause a noise nuisance to local residents and others if the variation application was agreed.

In response to a question, the applicant's representative stated that the seating capacity of the outside area of the ground floor was between 70-80 seats. For clarification, he stated that the new side entrance was on Bolton Road.

Due regard by the Licensing Sub Committee was given to the written representations and oral representations of two members of the public and those made by the Environmental Health Officer (on behalf of a Responsible Authority). Those related to the licensing objective of the prevention of public nuisance and objections were made in relation to noise and in particular to music being played late at night.

The Environment Health Officer outlined that there had been complaints over a considerable period (since 2021) concerning noise at the premises which had been brought to the attention of the premises licence holder.

He was confident that these premises were causing a noise nuisance. The Officer gave an example of Officers having directly witnessed excessive noise on these premises and on that occasion, they had dealt with the matter by asking those managing the premises at the time to turn the music down (incident at end of 2023). He noted two other more recent noise complaints (May 2024). He was concerned that the variation of the licence, as applied for, would increase the likelihood of excessive loud noise from the premises and negatively impact upon the licensing objective of the prevention of public nuisance.

The Officer was particularly concerned with the noise from the outside area of the premises and contended that if customers were allowed to go in and out of that area noise would be inevitable regardless of whether doors were to be kept closed and music was not directly played outside. He contended that this would have a significant impact on local residents, particularly in light of the late hours applied for.

In answer to a question, the Officer accepted that the premises licence holder had not been informed of the recent incidents of noise complaints and explained that was because in his view they did not amount to a statutory nuisance. The applicant's representative suggested that the premises licence holder could not be criticised if he was not aware of the noise complaints.

The representors (members of the public) accepted that as there were three licensed premises in a row so that it was difficult to pinpoint the source of the noise nuisance. However, it was suggested that these premises were a source of the noise.

A representor accepted that the premises licence holder may have undertaken steps to lessen the loud noise from music and customers but contended those efforts had made no difference but rather of late the premises had become noisier. An example was provided of an incident on 11 May 2024 when loud noise was heard by a representor from the rear of the premises at approximately 00.30hrs.

Points were raised about the local authority granting the premises licence and the premises being in close proximity to other licensed premises, but the Licensing Sub Committee did not consider those issues were relevant to the variation application.

The representors (members of the public) stated that the issue was largely about the use of the outside area of the premises, and it was contended that was the main source of the noise nuisance. It was stated that the architecture of the surrounding buildings tended to drastically amplify the music which significantly affected the residents of Lismore

Road. There was a suggestion that there were speakers in the outside area of the premises from which music was played although they believed that was not permitted.

The representors (members of the public) at the hearing contended that the local residents had to a right to live peacefully in their homes and they would not be able to do so if the variation application was granted. They asked the Members to consider the impact of the application on the local residents, based upon their previous experience of these premises. Further, they suggested that the applicant was not willing to “police themselves.”

A matter was raised at the hearing about excessive lights from the premises but because that had not been raised in the written representation the Licensing Sub Committee did not take that into account in making its decision.

In its deliberations the Sub Committee considered which decision would be appropriate and proportionate, from the options outlined in para. 8.1 of the Report.

Decision

To amend the licensable hours for the retail sale of alcohol and live and recorded music from the applied for time of 01.30hrs to 03:00hrs to 01.30hrs to 02:30hrs, and in addition to add a condition that the outside part of the premises ground floor shall be cleared of customers and closed by 01:30hrs. At the hearing the applicant provided a plan showing the inside parts of the premises marked within the yellow lines, the plan is attached to this decision.

Further, the conditions on page 24 of the Report to be included in the licence. For the sake of complete clarity those two conditions are, “A two door, double glazed side entrance shall be the only point for customers to enter and exit the premises after 21:00hrs on Fridays, Saturdays, and St George’s Day, St Patrick’s Day, Maundy Thursday, Good Friday, Christmas Eve and New Years Eve and any other applicable day preceding a Bank Holiday.” “The premises licence holder or appointed representative shall take all reasonable steps to ensure that any customers loitering outside the premises and do not congregate.”

Reasons for decision

The Licensing Sub Committee in making its decision took into account all the relevant parts of the representations made in writing and at the hearing. The Members appreciated the impact of noise nuisance upon local residents, particularly in light of the late licensable hours being applied for.

The Members took into account that a representation had been received from one Responsible Authority.

The Sub Committee also took into account the representations made at the hearing by the applicant’s representative and appreciated that the applicant had taken some steps to mitigate noise from the premises.

The Sub Committee noted that there were other premises in the area who may also be contributing to noise nuisance in the area. However, the Members believed that the premises, if the variation application was granted as applied for, would also contribute to

the noise nuisance and noted there was evidence of excessive noise from these premises at the current licensable times.

The Members were content to vary the relevant licensable hours until 02:30hrs but considered there would be a greater negative impact on the licensing objective of the prevention of public nuisance if that was to be extended to 03:00hrs.

The Members had significant concerns about noise in the outdoor part of the premises on the basis that whilst live and recorded music would not be played in that part it was evident that customers would go and out of that area. The Members believed this noise would adversely impact upon local residents, even with the doors being kept shut, apart from ingress and egress. In addition, given the size of the outdoor area there would be significant noise from customers even without music being played in that area.

The Licensing Act 2003 provides a right of appeal to the Magistrates' Court in respect of a variation application of a premises licence. 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.

Any appellant is requested to notify michele.wilkinson@lewes-eastbourne.gov.uk (Solicitor) if an appeal application is made.

The decision shall be provided in writing to all parties within five working days of the decision being made.