

## Licensing Sub-Committee

Meeting held on Wednesday, 25 August 2021 at 10.30 am. This meeting was held remotely. To view the meeting, please use this link - [here](#).

### MINUTES

**Present:** Councillor Pat Clouder

Councillors Maddie Henson and Margaret Bird

**Also**

**Present:** Councillor Patsy Cummings; Michael Goddard (Head of Environmental Health, Trading Standards and Licensing); Jessica Stockton (Corporate Lawyer); Michelle Gerning (Democratic Services Officer); Tariq Aniemeka-Bailey (Trainee Democratic Services Officer).

### PART A

32/21 **Appointment of Chair**

Councillor Maddie Henson nominated Councillor Pat Clouder as Chair and Councillor Margaret Bird seconded the motion.

The Sub-Committee **RESOLVED** to appoint Councillor Pat Clouder as Chair for the duration of the meeting of the Sub-Committee.

33/21 **Disclosure of Interests**

There were none.

34/21 **Urgent Business (if any)**

There were no items of urgent business.

35/21 **Licensing Act 2003 - Application For a Premises Licence at 17 Portland Road, South Norwood, SE25**

*The recording of this meeting can be view by clicking [here](#).*

*Following the item being heard the Licensing Sub-Committee's decision was:*

The Licensing Sub-Committee considered the Application for a Premises Licence at **Seafood Den Ltd 17 Portland Road, South Norwood, SE25 4UF** and the representations received as contained in the report of the Executive Director 'Place' and the additional documentary evidence submitted by the Applicant and Parties to the hearing prior to the hearing and incorporated in the supplementary information published as an addendum to the report and videos considered by the Sub-Committee in private session.

The Sub-Committee also considered the representations made by the Applicant and the objectors and their representatives during the hearing.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003 and the Council Licensing Policy, **RESOLVED** to **REFUSE** the application in respect of Sale of Alcohol on the premises, recorded music and performance of dance but **RESOLVED** to **GRANT** the application in respect of Sale of Alcohol off the premises subject to conditions detailed below on the basis that the Sub-Committee were satisfied that it would be appropriate to promote the licensing objectives to do so. The Sub-Committee considered that the objectives of the prevention of public nuisance and protection of children from harm were particularly relevant in relation to the consideration of the matter.

The reasons of the Sub-Committee were as follows:

1. The Sub-Committee noted that the premises were situated on the A215 in a small parade of shops with residential premises above and were surrounded by residential premises and a primary school to the rear of the premises. There were also a small parade of shops on the other side of the road, also with residential premises above them.
2. The Sub-Committee noted, as provided in paragraph 2.22 of the Statutory Guidance that the protection of children from harm included the protection of children from moral, psychological and physical harm. This included not only the protection of children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives.
3. In respect of Prevention of Public Nuisance, the Sub-Committee noted the importance of focussing on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable, as is suggested by the Statutory Guidance.
4. The Sub-Committee were aware, and had reference to the Statutory Guidance which provided that, beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engaged in antisocial behaviour was accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, which required the licence holder to place signs at the exits from the building which

would encourage patrons to be quiet until they left the area, and to respect the rights of people who lived nearby to a peaceful night. The Sub-Committee noted that the Applicant had already offered, as part of the proposed conditions to have such conditions on the license if granted.

5. The Sub-Committee noted from the Applicant's evidence that he had operated the venue since February 2019 and his concerns that there was a historic presumption that noise nuisance emanated from the premises and that this was now been attributed to him despite his view that his premises was not responsible for public nuisance in the area. In this regard, the Applicant submitted 7 short videos which were said to have been made between 9th and 19th of June 2021 to illustrate noise coming from elsewhere. In contrast, the Sub-Committee noted that the evidence presented on behalf of the Police was that there had been an intensification of complaints and police intervention at the premises over the past year or so, particularly from July 2020 as more specifically detailed in their supporting statements and representations. The Sub-Committee also noted that the representations from the pollution team related to instances of noise complaints, noise nuisance and statutory nuisance over the period from June 2019 to date, which included a finding of statutory nuisance and service of an abatement order in relation to the premises, which was not challenged by the Applicant and which remained in effect. The ward councillor speaking on behalf of residents was also clear that the noise nuisance which had been described was emanating from the premises in question, whilst acknowledging that there were other anti-social behaviour issues which arose in the area. The Sub-Committee were sympathetic to the fact that there were reported antisocial behaviour concerns regarding the area, however they were not persuaded, against the background of the contrary evidence presented, that the noise nuisance complained of – including loud music, swearing, DJ commentary and sexually explicit lyrics, noise from large groups of people, vibrations in their homes from the music noise - were not attributable to the premises under the control of the Applicant.

6. The Sub-Committee were very concerned about the descriptions given by the residents as detailed in the representations by the Ward Councillor and impact statement from the police regarding the detrimental impact the noise nuisance was having on residents, including those with families and young children - the impact on among other things, sleep, ability to work and attend school and curtailment of family time and rest due to the noise, some even going so far as to say that they tried to avoid being in their own homes or felt as if they were prisoners in their own homes as a result. The Sub-Committee were also concerned about the fact that none of the affected residents wished to be named or to make representations other than via their ward Councillor and the police impact statement due to fear of reprisals. The Sub-Committee noted that the noise nuisance complained of was such that on occasions it had reportedly drowned out the sound of children playing at the school which backs onto the premises.

7. The Sub-Committee considered that the noise nuisance complained of and the impacts thereof on local residents, jeopardised the licensing objective

of prevention of public nuisance and accordingly considered what options might be appropriate in order to promote the prevention of public nuisance.

8. In the first instance, the Sub-Committee considered whether it would be appropriate to impose conditions in order to address the concerns. The Sub-committee took into account the provisions within the Statutory Guidance at paragraph 9.44 regarding the imposition of conditions and noted that determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this did not therefore require a licensing authority to decide that no lesser step would achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions) as well as the potential benefit in terms of the promotion of the licensing objectives. The above referenced paragraph also suggests that the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.

9. The Applicant had submitted in his application that he wished to simply play background music indoors but that he also wished to apply for performance of dance both indoors and outdoors. The applicant had indicated, as part of the proposed conditions, that there be no DJ and no regulated entertainment at the premises. The Applicant also stated that he has not played music outdoors and that the speakers he uses were small and the maximum volume was not loud. Whilst the Sub-Committee appreciated the suggested conditions and restrictions by the Applicant in the application, the Sub-Committee were concerned as to the willingness or ability of the Applicant to comply with conditions imposed in this regard in light of previous interactions with Police and the Pollution team, both of whom had engaged in a number of attempts to ensure that the Applicant was working with the responsible authorities and ensuring the prevention of public nuisance in how he was running his premises but that this had not lead to an improvement of the situation as issues had continued to arise. In particular the Sub-Committee noted that:

- The Council's pollution team had to attend several times at the premises for example on 2 July 2019 following which the premises was warned about the loud music but this was followed by a further instance not even two days later – 4 July 2019 – when the duty officer again had to give a warning about loud music. On 17 July 2019, following noise complaints a warning letter was sent to the premises and three days later there was another loud party which required the duty officers' attendance twice when the first warning wasn't adhered to and the music turned up again after the duty officers' departure. Following easing of restrictions post national lockdown, a statutory nuisance was observed by an officer by virtue of the loud music and an abatement notice served on 21 July 2020. A contravention of this took place on 25 August 2020 and a contravention letter was sent to the applicant. Officer attendance was again required due to loud noise at the premises on 2 September 2020. Further officer attendance took place on 22 July 2021. The

Pollution team statement also detailed a number of further instances of complaints received where officers did not attend.

- The Applicant was notified in writing on 23 July 2020 that there was no premises license in place and there was therefore no authority to provide regulated entertainment at the premises nor was there authority to sell alcohol. Despite this, on 25 July 2020 Police were called to attend an event at the premises due to the loud music where a party of 25-30 people was in progress and alcohol was being sold by the Applicant despite not having a license to do so. This was reported to have been preceded by similar events over the previous three Saturdays. A month later police again had to attend the premises due to noise complaints where a “silent” disco was taking place. The Applicant had not applied for a license for the premises under the Licensing Act 2003, nor had he applied for a temporary event notice for the event. The Police evidence makes clear that this was also contrary to Covid restrictions in place at that time as it was a gathering of 50-60 people and at that point in time it was only permissible for people to meet as two households or 6 people from different households. During October 2020 the South Norwood Neighbourhood Safety Team was required to attend the premises due to breaches of Covid regulations regarding closure of premises by 22h00. During the second and third national lockdown – December 2020- April 2021, the police received no complaints about noise or antisocial behaviour. Following receipt of the first application by the Applicant, the Police Licensing Team and Ward Sergeant for South Norwood attended the premises on 28 May 2021 to continue to discuss how the premises could operate lawfully and in compliance with the licensing objectives and detailed the concerns about noise nuisance and anti-social behaviour associated with the premises. The next day and over the bank holiday weekend 29-31 May 2021 the police received several complaints about over 100 people being on the premises and causing a noise nuisance. There was a DJ in attendance and was advertising that such events would take place “every weekend”. The police state that this was again an unlicensed music event and in breach of Covid regulations which were in place at the time. On 27 and 28 June 2021 a clubbing event was advertised at the premises at a point in time when nightclubs could not legally be open due to Covid restrictions. The Sub-Committee noted that the Applicant indicated that the premises had been hired out for a private event and that he had not placed the adverts, however the Applicant remained responsible for what occurs at his premises and for ensuring that any person hiring the venue does so in an appropriate manner.

In light of the above, the Sub-Committee were not satisfied that the imposition of conditions would be an appropriate means of ensuring the promotion of the licensing objective of prevention of public nuisance either in relation to the proposed recorded music or the performance of dance. In addition, the sub-committee were not satisfied that the imposition of conditions would support the objective of prevention of children from harm in the current circumstances in relation to the proposed recorded music or the performance of dance.

10. The Sub-Committee noted, in regard to the deregulation of recorded music in certain circumstances, that any conditions added on a determination of an application for a premises licence which related to live music or

recorded music were effectively suspended between the hours of 08.00 and 23.00 on the same day where the following conditions are met: a. at the time of the music entertainment, the premises were open for the purposes of being used for the sale or supply of alcohol for consumption on the premises; b. if the music was amplified, it had to take place before an audience of no more than 500 people; and c. the music had to take place between 08.00 and 23.00 on the same day. The premises license application sought hours for sale of alcohol on and off the premises between 12.00 and 23.00 seven days a week and therefore controlling noise nuisance arising from recorded music at the premises would not come within the purview of conditions during the hours the applicant proposed to operate if a license for on sales were in effect. Whilst the Sub-Committee were aware of the provisions of Section 177A of the Licensing Act 2003 which allowed for the imposition of conditions pertaining to music which would ordinarily be de-regulated, the powers under Section 177A would only arise in the event that the Sub-Committee is considering a review, which was not of assistance to the Sub-Committee in the current circumstances.

11. The Sub-Committee, then went on to consider whether they could permit certain activities applied for, whilst removing certain activities from the any license granted for the premises. The Sub-Committee observed that if the sub-committee were to grant a license for on sales (sales of alcohol on the premises) then the applicant would be permitted to play recorded music at the premises between 0800 and 2300 as a result. If the premises were licensed for off sales only, that would not be the case. The Sub-Committee were very concerned about the consequences of on sales in this regard given the history of issues at the premises in relation to noise and the ongoing need for police and pollution team involvement as a result of a lack of improvement in this regard. The Sub-Committee were also mindful of the extensive detrimental impact which residents have described which arose at a point in which the premises were not even authorised to play recorded music, provide performances of dance or for sales of alcohol on or off the premises.

12. The Sub-Committee noted that the Applicant was both the owner of the business and proposed to be Designated Premises Supervisor ("DPS") should the premises be authorised for the sale of alcohol. The DPS was the key person who would usually be responsible for the day to day management of the premises, including the promotion of the licensing objectives. The Sub-Committee had regard to the number of police interventions and the numerous instances of involvement from the Council's pollution team, including in relation to statutory nuisance and abatement notice at the premises whilst the Applicant was in charge, alleged breaches of Covid-Regulations, and alleged breaches of Licensing Act 2003 requirements detailed by the police and the extensive concerns raised by residents via their ward councillor.

13. The Sub-Committee noted that the Applicant had successfully applied for a Personal License and whilst they did not have confidence in the track record of the premises in relation to activities which could potentially exacerbate ongoing noise nuisance issues which featured so prominently in

the representations – the activities of sale of alcohol on the premises, recorded music or performance of dance – the Sub-Committee considered that it could permit sale of alcohol off the premises as applied for without detrimentally impacting on the promotion of the Licensing Objectives provided that the conditions proposed by the applicant and those imposed by the committee were adhered to. The Sub-Committee noted that it had not received any representations to indicate that the provision for off sales specifically would impact detrimentally on the promotion of the Licensing Objectives. Whilst the Sub-Committee were aware that the area in which the premises was situated was within what the Council's Statement of Licensing Policy terms a "special stress area", where concerns had arisen about the number of premises authorised for off sales, the Sub-Committee was clear that the Council had not adopted a cumulative impact policy in relation to the area and furthermore that the Applicant had stated that off sales would be made via deliveries by their delivery partners such as Uber eats and Just eat and that this could be made a condition to such sales. The Sub-Committee also noted that the Applicant had proposed conditions in Appendix A2 to sales of alcohol generally (conditions 3-10, 15-17, 19-23) and off sales in particular (conditions 22 & 23) and had agreed conditions with the trading standards team, as detailed at Appendix A3 which would apply to such off sales if this part of the application were granted.

14. In light of the above, the Sub-Committee considered that in addition to the conditions offered by the applicant which relate to sales of alcohol generally and off sales in particular, including those at Appendix A2 and A3 to the report, the following condition would be applied to the sale of alcohol off the premises to cover the Applicant's undertaking that off sales would only be made via delivery partners:

"There shall be no sale by retail of alcohol for consumption on the premises. Any sale by retail of alcohol for consumption off the premises shall only be made via delivery services"

15. The Sub-Committee wished to thank all participants for the manner in which they engaged with and supported the hearing in providing information to allow the Sub-Committee's consideration.

36/21 **Exclusion of the Press and Public**

This item was not required.

The meeting ended at 12.58 pm

**Signed:**

**Date:** .....