

**MINUTES OF THE MEETING OF THE LICENSING SUB
COMMITTEE B HELD ON THURSDAY, 31ST AUGUST, 2017, 7.00
- 9.35 pm**

PRESENT:

Councillors: Toni Mallett (Chair), Reg Rice and Clive Carter

18. FILMING AT MEETINGS

Noted.

19. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Beacham. Councillor Carter was in attendance as a substitute member.

20. URGENT BUSINESS

None.

21. DECLARATIONS OF INTEREST

None.

22. MINUTES

The minutes of the meeting held on 20 June 2017 were approved as a correct record.

23. SUMMARY OF PROCEDURE - VARIATION

The Chair outlined the procedure to be followed at the hearing.

24. NICKEL, 143B CROUCH HILL, N8 9QJ

Daliah Barrett, Licensing Officer, introduced the application for a variation of the existing premises licence at Nickel, 143b Crouch Hill, N8 9QJ. The applicant wished to vary the hours of operation and the layout of the premises to allow for a bench outside of the premises for the consumption of alcohol. Ms Barrett informed the Committee that as the outside of the premises was on the public highway, any request to use this area would be subject to a further application for a street trading licence. Representations had been received from local residents.

Ms Barrett informed the Committee that the references on the current licence (under Annex 2, prevention of public nuisance) to live music ceasing at 23.00hrs and alcohol sales ceasing at 23.30hrs shall be removed, as they served no purpose on the licence. Ms Barrett added that that KMNS Trading Ltd had been running the premises since May 2016 and there had been no complaints recorded against them.

Rosemary Jackson, Interested Party, outlined her representation against the application. Her objection mainly focussed on public nuisance and the noise that would be heard from the premises late at night. The road that the premises was located on was not a particularly busy road, with very few commercial premises. The tables outside of the premises would encourage people to sit there to smoke, increasing the noise nuisance and causing further noise to escape from the doors with people entering and exiting the premises to smoke. Ms Jackson added that she would accept extended hours for Friday and Saturday only.

Steve Williams, Applicant, presented the application for a variation of the premises licence. He explained that KMNS Trading Ltd had applied for an extension in hours to allow the restaurant to expand the business and increase daytime trade. He informed the Committee that the request to extend the hours on Thursday evening had been withdrawn.

Mr Williams explained that sound proofing work had been carried out at the premises and there were ongoing discussions with the landlord and upstairs tenants to control any potential noise nuisance. He described the area surrounding the premises and informed the Committee that the premises was located on a commercial strip, next to a busy recording studio and an off licence. The Blue Legume restaurant provided 20 covers outside of the restaurant and operated until 22.30hrs. This application was for 6 covers outside of the restaurant. Mr Williams also pointed out that no representation had been made by Enforcement Response.

All parties made a brief closing statement and the Committee retired to consider its decision. The Chair informed all present that the decision would be circulated in writing following the hearing.

RESOLVED

The Committee carefully considered the variation application and the representations made by residents, as well as the council's statement of licensing policy and the Licensing Act 2003 Section 182 guidance.

Having fully considered the written and oral representations and questioned those present, the Committee decided to grant the application in part as follows:

Opening Hours

Sunday to Thursday	1000 to 2330 hours
Friday and Saturday	1000 to 0030 hours

Supply of Alcohol

Sunday to Thursday	1000 to 2300 hours
Friday and Saturday	1000 to 0000 hours

For Consumption ON and OFF the premises

Late Night Refreshment

Friday and Saturday	2300 to 0000 hours
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Seasonal variations

New Years Eve

Opening hours	1000 to 0330
Supply of Alcohol	1000 to 0300
Late Night refreshment	2300 to 0300
Recorded music	1000 to 0300
Live Music	2300 to 0300

The Committee heard evidence that the premises were not situated on the main road, but on Crouch Hill, where there was a mix of commercial and residential premises. The premises are on the ground floor with residential flats above and across the road. The Committee were of the view that the premises were part of the commercial strip of properties and that the areas was not purely residential as there were other shops and restaurants in the area.

It was suggested to the Committee that a nuisance would be caused by the premises if the licence was extended to the later hours proposed by the variation, but the Committee were persuaded by the evidence that the premises were a well-run small restaurant and bar seating 24 people, they do not play loud music and there had been no complaints to the Council since May 2016 when it starting operating. The Committee therefore decided that granting the licence would not undermine the licensing objective of the prevention of public nuisance and so the extended hours were granted.

In granting the extension, the Committee confirms that the condition which states:

- The sale of alcohol will cease at 23.30 allowing half an hour for patrons to leave orderly and quietly

shall be excised from the licence.

The condition which states:

- All live music will stop prior to the 23.00 noise curfew, with the exception of non-standard timings, of which will be advertised prior to the date reasonably in advance.

Shall be amended to read:

- All live music after 23.00 will be advertised prior to the date reasonably in advance.

The application included a variation to the layout of the premises in accordance with a plan that included a proposed external seating area on the pavement at the front of the premises. Having regard to the evidence that the pavement was narrow, that when a bench had been placed outside previously for customers to smoke residents had complained about the smoke going in their windows and that the noise had been intrusive, the Committee decided that having a seating area outside would inevitably bring the noise outside and unreasonably affect the residents particularly those above, which would undermine the licensing objective of the preventing public nuisance.

The Committee also considered evidence that the seating outside would cause an obstruction to the shared entranceway to the premises above. Having considered these representations, the Committee decided that having a seating area on the

pavement was likely to cause an unreasonable obstruction that would affect public safety.

For the reasons given above the part of the application relating to the outside seating area was rejected.

25. SUMMARY OF PROCEDURE - REVIEW

The Chair outlined the procedure to be followed at the hearing.

26. THE HARRINGAY ARMS, 153 CROUCH HILL, N8 9QH

Daliah Barrett, Licensing Officer, introduced the application for a review of the premises licence made by Molly Keane, local resident, on the grounds of public nuisance and crime and disorder. Ms Barrett informed the Committee that there had been a history of noise nuisance at the premises, with 60 complaints made since 2013, although 52 had not been established due to the noise stopping, or Council officers not being available to attend. Representations had been made in support of the review by the Licensing Authority, Enforcement Response and local residents. Ms Barrett informed the Committee that majority of the complaints made related to the old management, however it was important to note that complaints had still been made under the new management. Ms Keane had been contacted by the Licensing Authority to see whether she still wanted to proceed since the change in management at the premises, and she indicated that she did.

Molly Keane, local resident, presented her application for a review of the premises licence. She informed the Committee that she had moved into the premises in March 2017, and had not been able to sleep for more than 3 hours at night due to noise from the premises. She had experienced incidents of intimidation from bar staff and patrons when making noise complaints.

Ms Keane explained that the garden of the premises was surrounded by residential properties, and it was mainly noise from the garden which caused the biggest nuisance. The main source of noise was from people talking, however, the poor soundproofing of the premises and the opening and closing of the door when there was live music playing also caused a nuisance. She added that she had stopped making complaints to the Council, as there had been no improvement in the levels of noise.

Ms Keane requested that the Committee reduce the hours of the premises in order to address the late night noise issues. She explained to the Committee that the current hours were out of sync with other premises nearby, and without a reduction in the hours there would not be any change to the issues experienced.

Mark Eastwood, Enforcement Response, outlined the representation made by Enforcement Response. The team were aware of the noise problems at the premises, and had experienced it first hand during visits. The premises had been issued with warning letter, noise abatement notices, Fixed Penalty Notice and prosecution against the previous management. He considered that a reduction in opening hours and use

of the garden, along with the inclusion of conditions on the licence could help to resolve the issues.

In response to Ms Keane, Mr Eastwood confirmed that during a visit where live music was playing at the premises, the doors to the premises were closed and the music was still at a level where it would be impossible for anybody to sleep.

In response to the Applicant's Representative, Richard Taylor, Mr Eastwood agreed that the proposed noise management plan could assist in dealing with noise problems.

Richard Taylor, Applicant's Representative, responded to the application for a review of the premises. He explained to the Committee that the premises were under new management who had many years of experience in running neighbourhood pubs, and the issues described by Ms Keane related to the old management. He referred to the noise management plan, which had been created using examples of good practice from other premises and explained that this would be a major factor in resolving the issues experienced.

Mr Taylor informed the Committee that he would be happy to restrict the hours for the use of the garden in line with those requested by Enforcement Response. However, he felt that there was not the need to reduce the opening hours as the new management would be able to deal with any potential issues.

Following a short discussion, the Committee adjourned to consider the application. The Chair informed all present that the decision would be circulated in writing following the hearing.

RESOLVED

The Committee carefully considered the review application, the representations made by residents, the Enforcement Response Team, the Licensing Authority and the premises licence holder, as well as the council's statement of licensing policy and the Licensing Act 2003 Section 182 Guidance.

Having fully considered the written and oral representations and questioned those present, the Committee decided to modify the opening hours and licensing hours of the premises and modify the conditions on the licence as follows:

Opening Hours

Sunday to Thursday	1000 to 0000 hours
Friday and Saturday	1000 to 0100 hours

Supply of Alcohol

Sunday to Thursday	1000 to 2330 hours
Friday and Saturday	1000 to 0030 hours

For Consumption ON and OFF the premises

Recorded and Live Music

Sunday to Saturday	1800 to 2300 hours
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Late Night Refreshment

Sunday to Thursday	2300 to 2330 hours
Friday and Saturday	2300 to 0030 hours

The Committee heard evidence that the premises are land locked and in close proximity to residential premises on every side. Over the last 4 years there had been over 60 complaints of noise nuisance to the Enforcement Response Team. Whilst only a small number of complaints had been established, this was not reflective of the scale of the problem. The level of complaints coincided with the extension of the opening hours to 0130 hours during the week and 0230 hours at weekends. The Committee determined that this application engaged the licensing objective of the prevention of public nuisance.

The Committee noted that the current licence holder the Bermondsey Pub Company only took over the licence in July 2017, after the review had been lodged, and that none of the incidents giving rise to the review took place whilst they were in control of the premises. Since taking over the licence the premises have been closed for refurbishment.

The Committee accepted that the current licence holder is in no way responsible for the nuisance caused at the premises which is the subject of the review, however the proximity of the premises to residential premises, particularly the outside garden area and the late opening hours have all contributed to the unacceptable levels of public nuisance experienced by the residents and this cannot be ignored.

The public nuisance in the main related to loud music, loud voices, people outside smoking, fighting and live music. The Enforcement Response Officer provided evidence that the noise in neighbouring properties was extremely intrusive. He had attended a complainant's home on one occasion he could hear the live band from the resident's property with all the voices and all the music being audible. He described the level of noise as outrageous.

To deal with the noise escape from the premises and the garden area, the Committee considered it proportionate to impose appropriate conditions relating to the playing of live and recorded music. In order to give effect to those conditions the Committee exercised its powers under section 177A (2) of the Licensing Act 2003 (the Act), to make a statement on this review pursuant to section 177A(3) of the Act disapplying the live and recorded music exemption given to premises and adding conditions relating to music to the licence in accordance with section 177(4) of the Act.

The Committee considered the alternative of withdrawing the licensable activities of live and recorded music from the license but considered it would be disproportionate to do so and that the new licence holders should be given the opportunity to demonstrate that they could successfully operate the business and promote the licensing objectives.

Having considered the available options including sound proofing, the Committee determined that it was appropriate to amend the conditions so as to ensure that all music whether amplified recorded music or live music was played at a volume that would not cause a nuisance to neighbouring residents. The Licence holder had

offered to control volume levels with the use of a decibel app but the committee considered a noise limiter more appropriate. The Licence holder was also willing to limit live music events to one time per week and the Committee agreed that this would be appropriate.

The Committee also considered it appropriate to impose conditions to ensure that residents living next to the property and across the road are not unreasonably disturbed by the activity of patrons outside the premises. The Committee decided that given the proximity to residential properties it was appropriate to limit the playing of live and amplified recorded music (not background) music to 11 p.m. so that residents could not be disturbed after this time and to close the rear garden area to patrons at 2200 hours on Sunday to Thursday and 2300 hours Friday and Saturday.

In addition, much of the nuisance was caused by the poor management by the previous licensee in dealing with noisy and rowdy customers and breaches of the licensing hours in relation to the playing of live music. The Committee was grateful for the assurances by the new licence holder that the premises would be well run and for the Noise Management Policy (at pages 86 to 88 of the supplementary pack) submitted to the Committee, which the Enforcement Response Officer considered suitable to alleviate further problems. Given the history of mismanagement, the Committee considered it appropriate and proportionate to impose all of the measures proposed in the Noise Management Policy (including the bulleted dispersal procedures on page 88) as conditions on the licence, amended for the reasons given above as follows:

- Live music and recorded music - the volume control should be via a sound limiter (not a decibel app) at a decibel level to be agreed with the Enforcement Response Team. All music (recorded or live) played at the premises shall be played through the sound limiter.
- Garden and frontage - The rear garden area to be cleared by 2200 hours Sunday to Thursday and 2300 hours Friday and Saturday.
- After the rear garden area has closed the frontage only should be used for smokers and regularly checked by staff to ensure patrons do not cause a nuisance e.g. by loud talking.

Where there is inconsistency between these conditions and those attached to the previous licence the new conditions apply.

The Committee considered that all of the noise conditions, which include conditions restricting the frequency of live music, reducing the hours that patrons use the garden area, signage about appropriate behaviour and the dispersal procedure, would be appropriate and proportionate to promote licensing objective of the prevention of and public nuisance.

The Committee looked carefully at the opening hours for the premises and whether they were negatively impacting on the licensing objectives. The Committee decided that the late opening of the premises was a significant contributory factor to the levels of nuisance and distress that had been experienced by residents and that it was not appropriate to have such late opening hours in such a densely residential area. Even with the conditions being imposed and the restrictions on the use of the rear garden area, and even if the premises were well run, it was the Committee's view that taking

into account the proximity to residential premises a nuisance was likely to occur in the early hours of the morning. The Committee viewed with particular sympathy the evidence of the review applicant that she was getting approximately 3 hours sleep a night because she was kept awake by noise and she had to get up at 5.30 a.m. for work. The Committee considered the impact this had had on her mental and physical well being and decided that the opening hours should be reduced and aligned more closely with those set out in paragraph 53 of the Council's Statement of Licensing Policy.

27. ITEMS OF URGENT BUSINESS

None.

CHAIR: Councillor Toni Mallett

Signed by Chair

Date