

Licensing Sub Committee B - 19 May 2020

Minutes of the meeting of the Licensing Sub Committee B held by Zoom on 19 May 2020 at 6.30 pm.

Present: **Councillors:** Sheila Chapman, Phil Graham (Chair), Marian Spall

Councillor Phil Graham in the Chair

129 INTRODUCTIONS AND PROCEDURE (Item A2)

Councillor Phil Graham welcomed everyone to the meeting and introduced officers and members. The licensing officer introduced the applicant. The procedure for the conduct of the meeting was outlined.

130 APOLOGIES FOR ABSENCE (Item A3)

Received from Councillors Vivien Cutler and Matt Nathan.

131 DECLARATIONS OF SUBSTITUTE MEMBERS (Item A4)

Councillor Sheila Chapman substituted for Councillor Vivien Cutler and Councillor Marian Spall substituted for Councillor Matt Nathan.

132 DECLARATIONS OF INTEREST (Item A5)

None.

133 ORDER OF BUSINESS (Item A6)

The order of business was as set out in the agenda.

134 MINUTES OF PREVIOUS MEETING (Item A7)

RESOLVED:

That the minutes of the meeting held on 23 April 2020 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

135 SERATA HALL, THE BOWER, 207B OLD STREET, EC1V 9NR - REVIEW OF PREMISES LICENCE (Item B1)

The Licensing Officer stated that there was no additional information to add to that in the report which had been circulated and the supplementary statement from residents.

One of the local residents, who had submitted the application for review of the licence, stated that the procedure of reaching an application for a review to the Licensing Sub-Committee had been a painful one for the residents. They had endured noise for four and a half years, including building works at Serata Hall. She invited one of the former residents of Serata Hall, who owned an apartment at Serata Hall but who now lived elsewhere, to address the Sub-Committee as a

witness. The second resident stated that she had lived on the top floor of the building until September 2019. During the summer, there had been unacceptable levels of noise in her living room and the mezzanine bedroom. The noise was particularly bad in the afternoons and at weekends. She had been able to see large tables and chairs outside Serata Hall and could hear noise from the premises, even if her windows were not open. The noise went on until after 9pm. On one occasion, the premises staff had failed to put away the chairs and tables and anti-social behaviour had continued until 4am. She had moved away soon afterwards but planned to return in the future.

The first resident described the Noise Team's suggestions for dealing with the noise and anti-social behaviour as a "step forward". The fault did not lie entirely with Serata Hall as the noise vibrated because of the design of the buildings in the immediate area. The flats below her own did not suffer from the noise problems, whereas she did. She said that the noise was worse than that from traffic and that there was unbelievable noise from Serata Hall. She asked the Sub-Committee to imagine a constant conversation, with loud voices. She could not open her windows because of the noise. She hoped that the outside seating area of the premises could be moved to the other side of The Bower, where it would be facing Old Street and where there were no residential buildings. This would become feasible once the improvement works around the Old Street Roundabout were completed. Until that time, she hoped that some measures could be introduced in the interim to deal with the noise. Some of the proposals would work, such as closing the seating area at 9pm. Firstly, one of the suggestions had been that no more than 20 people be allowed in the outside seating area after 7pm, but residents suggested an amendment to that so that there was a restriction on the number of served customers to start at 6pm on Friday and Saturday and to include the bottomless brunch period. Secondly, the residents requested a limit on the size of tables, as people seated at those tables generated noise, often shouting and screaming. Thirdly, on the matter of the barriers to contain customers outside Serata Hall, it seemed that these would be placed there to prevent customers from spilling outside the area of Serata Hall and would need to create an effective sound barrier. She had been told that insulating material could not be fitted to the outside walls. She asked what programme the managers of Serata Hall would operate to ensure that noise could be controlled. Outside customers would need supervision. They should not be standing around outside and signage should be erected to make this clear to customers.

A third resident asked how the conditions on the licence were to be enforced. He noted that residents had been through this before. He queried whether the video evidence submitted to the Sub-Committee was sufficient to prove that there had been a violation of those conditions. He queried whether the consequences of non-compliance with the conditions might be that residents would have to suffer another year of noise and then have to submit another request for a review of the premises licence.

A member of the Sub-Committee stated that she was sorry to hear of the noise nuisance suffered by residents local to Serata Hall. In order that she could

understand the position clearly, she asked how many residents lived in the building and how many levels there were. She had read the agenda pack and had noted multiple complaints from what seemed like a small number of people.

The first resident replied that most of the residents on the façade of the building facing Serata Hall had left. The two flats next to hers were empty. A number of residents were in financial distress. Of the 20 approximately 20 flats facing Serata Hall very few were occupied. There were approximately 60 flats in the building but not all faced the courtyard area.

The noise officer reported that their conditions had been proposed to tackle the noise issues raised by residents. These included a maximum of 20 customers outside after 7pm, the closure of the outside area at 9pm and the employment of a door supervisor. Barriers would be used to provide a clear demarcation area. These measures would limit the noise nuisance.

In response to questions it was noted that in cases of a noise nuisance a review procedure could be commenced or, if the noise team witnessed a noise nuisance, a notice could be served under the Environmental Protection Act. The noise team could also start review proceedings where they considered that conditions had not been adhered to.

The licensee's representative stated that the premises was currently closed and the decision made at the meeting would determine whether it remained closed or re-opened. The external space could reopen from July if coronavirus restrictions were lifted. Planning permission had previously been granted. He stated that the courtyard was a public thoroughfare. The video taken by the applicants showed people walking through the courtyard which had nothing to do with the premises. Three residents had submitted the review out of a possible 63 flats. 15 of the flats faced into the courtyard. There was an issue of proportionality and reasonability. The premises had not ignored the concerns of residents and had complied with their conditions. They had not been approached by residents and had set up a WhatsApp group for complaints. They had developed a comprehensive management plan and only one statutory nuisance had been identified. In the long term it was expected that the seating area would be relocated on the south side following works to the roundabout but this was not expected until the end of 2020/2021. It was unlikely that the external space would be opened without the inside area. There were currently 49 staff on furlough and with office developments quiet there would be no trade. The premises were unlikely to open in the short term despite paying rent. The licensee's representative asked that the Sub-Committee consider Home Office guidance at paragraphs 11.17 and 11.23 and take into account the detrimental financial impact of any decision. He stated that the decision must be appropriate and proportionate and that these were unusual circumstances.

The Managing Director stated that their rent for the year was £275 000 and 49 staff were employed at the premises who were currently all furloughed. The business was dependant on staff from local offices and with many people working from home

Licensing Sub Committee B - 19 May 2020

may not open until 2020/2021. The business may have to close if there was any reduction in the ability to pay the rent. Social distancing would demand a decrease in space which would reduce the financial viability of the business.

The Council's Legal Adviser asked for clarification from the licence holder's representatives that all of the additional conditions suggested by the Noise Team had been agreed. The licence holder's legal representative said that those conditions had never been agreed. The Licensing Officer confirmed that the additional conditions had been proposed by the Noise Team. The Council's Legal Adviser asked the licence holder's legal representative whether any of the proposed conditions were acceptable. He replied that the proposed condition that trade in the external area would close by 10pm, was the best they could offer. In response to a further question from the Council's Legal Adviser as to whether the licence holder might consider the employment of SIA appointed staff to monitor security, was advised that the additional cost could not be afforded by the licence holder.

A member of the Sub-Committee stated that this was new information to the Sub-Committee. She noted that some of the conditions proposed by the Noise Team would not come at cost, for example the request that customers at the premises remain seated, that barriers be erected around the seating area, that there be no standing and asked whether those types of conditions could be agreed. The licence holder's legal representative said that there were difficulties associated with that as it presumed a finite number of seats in the outside space. He said that they would accept an operating policy for the use of the outside space and would do what they could to operate the space in accordance with an agreed policy. He added that they wished to work with the local residents, for example by closing the outside space at 10pm and bringing the furniture inside.

A member of the Sub-Committee stated that all present were aware of the financial constraints imposed by the current situation caused by Covid19. He queried whether, if the circumstances had been different and traffic was still running around Old Street corner and there were no restrictions relating to social distancing, the situation would have been the same. The licence holder's legal representative stated that the Sub-Committee would have to consider the circumstances as they currently stood. He maintained that this was an unusual situation and stated that he would include legal observations in his summary.

A member of the Sub-Committee asked the residents whether, now that the premises were closed, the noise nuisance from the public was still continuing. The first resident confirmed that there was no noise nuisance at present.

In summary, the first resident said that she appreciated all the difficulties faced by the licence holder, whose staff had been furloughed. She was unable to sell her own flat and added that the noise did not help. Two of the other residents who were present were unable to rent out their apartments and this had affected their financial positions. Three establishments had opened in the area in the past 4 years. Residents had had difficulties in selling their apartments. The Covid19 pandemic had affected everyone.

The Noise Team's representative stated that, if the situation reoccurred, there were mechanisms to review the licence and, if it was established that noise from the premises was a cause of nuisance, the Council could use the Environmental Protection Act to address the nuisance. He also noted that some of the conditions proposed by the Noise Team did not have cost implications and could be appropriate to limit noise nuisance.

The licence holder's legal adviser said that these were unprecedented times and it would be difficult for the Sub-Committee to decide how to deal with the review, if it decided that any action at all was required as a result. Paragraph 11.17 of the Licensing guidance stated that the Sub-Committee could decide not to take any action in response to the review application. The noise issues had taken place some time ago and the premises were not likely to open for months in the current climate. They were waiting to hear what the new guidance on social distancing might be. He suggested that proportionality was key and questioned whether 3 flats out of 63 in a building was sufficient in terms of paragraph 11.23 of the guidance, which stated that action should be proportionate and not detrimental.

RESOLVED:

That the Sub-Committee has decided to modify the premises licence in respect of Serata Hall, The Bower, 207B Old Street, EC1V 9NR as follows:-

The following conditions as detailed on page 110 of the agenda shall be attached to the licence with the following amendments. These will apply when the premises is in operation.

- The outside drinking area to the north elevation facing the Bower precinct shall be cleared of customers by 22:00.
- All tables and chairs outside on the outside drinking area facing the Bower precinct shall be taken out of use and disabled by 22:00.
- There shall be a physical barrier demarcating the area rented by Serata Hall around any outside drinking area to contain any customers outside to within the designated outside drinking area.
- Staff shall use best endeavours to encourage customers using the outside areas to be seated while outside.
- In the event of an outside seating area being created on the south side facing Old Street, the rear north facing outside drinking area facing the Bower precinct will be taken out of use.
- After 22:00 the doors to the north elevation facing the Bower precinct shall be for emergency use only and notices shall be displayed to that effect.
- A noise management plan shall be enforced by management. The NMP shall be reviewed annually and a copy shall be provided to the Licensing Team for their files.
- A closing down plan shall be adopted by the premises and customers shall be directed to the southern exits at the end of trade.
- Proposed conditions 3, 5 and 9 be deleted.

REASONS FOR DECISION

This meeting was held under regulations made under the Coronavirus Act 2020 and it was facilitated by Zoom.

The Sub-Committee listened to all the evidence and submissions and read all the material. The Sub-Committee reached the decision having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's Licensing Policy.

The Sub-Committee noted the supplementary statement from the applicants and the additional measures they proposed in response to the noise conditions. The Sub-Committee noted that the applicants' flats were positioned along the façade of the block facing Serata Hall. It was also noted that, within the block of 63 flats, 15 of these faced onto the courtyard.

The Sub-Committee noted the current financial position of the licensee and the prospects of the premises reopening in the near or mid-future. The Sub-Committee noted that the licensee did not accept any of the conditions put forward by the noise team. However, the licensee did offer a terminal hour of 10pm for the outside seating area.

The licensee submitted that the Sub-Committee should consider the Home Office guidance at paragraphs 11.17 and 11.23. The Sub-Committee noted the licensees' submission that because of the unprecedented times leading to the closure of the premises it would be appropriate to impose no further steps. The Sub-Committee noted that any detrimental financial impact that may result from its decision should be appropriate and proportionate to the promotion of the licensing objectives.

The Sub-Committee decided that some of the conditions suggested by the noise team should be implemented in order to promote the licensing objectives. The Sub-Committee concluded that the steps proposed would have a limited financial impact on the licensee and would address the concerns of the applicants. The Sub-Committee also decided that the conditions would only apply once the premises resumed operation.

The Sub-Committee decided it was reasonable and proportionate to add new conditions to provide a reduction in the hours of use of the outside area and minimise nuisance. The Sub-Committee concluded that these were appropriate and proportionate measures to ensure the promotion of the licensing objectives.

The meeting ended at 7.50 pm

CHAIR