

EAST DEVON DISTRICT COUNCIL

Minutes of the meeting of Licensing and Enforcement Sub Committee held Online via the Zoom app on 15 June 2022

Attendance list at end of document

The meeting started at 9.30 am and ended at 10.42 am

7 Declarations of interest

There were no declarations of interest.

8 Matters of urgency

There were no matters of urgency.

9 Confidential/exempt items

There were no confidential / exempt items.

10 Determination of an application for the grant of a premises licence to allow the sale of alcohol ON and OFF the premises, the provision of regulated entertainment and the provision of late night refreshment at Lympstone Manor Hotel, Courtlands Lane, Exmouth EX8 3NZ

The Sub Committee considered the application for the grant of a premises licence to allow the sale of alcohol ON and OFF the premises, the provision of regulated entertainment and the provision of late night refreshment at Lympstone Manor Hotel, Courtlands Lane, Exmouth EX8 3NZ. The meeting was a hearing to consider the application for a premises licence under the Licensing Act 2003.

The Chair introduced the members of the Sub Committee.

The applicant, Michael Caines of Lympstone Manor Ltd, had given notice that he would not attend and would not be represented at the hearing.

The interested parties, present and entitled to make representations were Jessica Dawkins, Jeffrey Kitson, Kathryn Kitson and John Longstaff.

The Licensing Authority had received representations from Devon & Cornwall Police and East Devon District Council Environmental Health Service.

The Sub Committee's legal advisor, Rebecca Heal, outlined the procedure for the meeting.

The Licensing Officer, Phillippa Norsworthy, outlined the application including the proposed licensable activities, which were set out at Appendix A of her report. The existing premises licence covered the hotel building only and provided for the same licensable activities as currently applied for, with the new application seeking slightly different timings. The existing conditions on the current premises licence were set out at

Appendix K and the conditions offered by the applicant within the operating schedule were set out separately at Appendix I.

The Licensing Officer advised that twelve representations had been received in total. The applicant had come to an agreed position with the two responsible authorities who had submitted representations, and had agreed to additional conditions being imposed on the operating schedule which were set out at Appendix J. The remaining ten representations in objection had been received from local residents, none of which had been withdrawn. The representations were set out at Appendix D. Local residents' key points and supporting documentation was set out at Appendices E, F, G and H. The applicant's response to the notice of hearing was set out at Appendix E. There had been no updates to the report since publication.

In response to questions from Members of the Sub Committee, the Licensing Officer advised the following:

- The regulated entertainment applied for would take place indoors only.
- The late night refreshment would be open to the public, with the 24 hours for alcohol sales for hotel residents and their bonafide guests only.
- No complaints had been received with regard to the current premises licence. A complaint had been received regarding a temporary event notice for an outdoors event in the previous year.
- The determination of bonafide guests of hotel residents would be a matter for the hotel.

In response to a question and concerns raised by the interested parties, the Licensing Officer advised that with regard to doors and windows remaining closed during events, this would depend on the conditions imposed on the licence for regulated entertainment.

The Legal Advisor confirmed that, within the agreed conditions, the applicant had agreed that all external windows and doors to any room where regulated entertainment was taking place must be kept closed except for access and egress.

In response to a query from an interested party regarding the report for the meeting, the Chair advised that all papers had been available on the Council's website and a link sent to the interested parties. The Legal Advisor suggested that the meeting could be adjourned briefly to allow the interested parties to view the report. An interested party requested a summary of the points which had been agreed with the applicant.

The Licensing Officer advised that the conditions put forward by the Police and Environmental Health, and agreed with the applicant, were set out in Appendix J of the report.

As the only licensing objective which was at issue was that of public nuisance, the Licensing Officer summarised the agreed position on public nuisance which had been reached with the Police and Environmental Health as set out in Appendix J of the report.

The Licensing Officer also summarised the conditions which had been put forward by the applicant in the Operating Schedule [Appendix I] in connection with the licensing objective of the prevention of public nuisance.

The Chair noted that a brief adjournment had been suggested and asked the interested parties whether the Licensing Officer's summary had provided sufficient information.

In response an interested party requested clarification of the definition of noise sensitive properties and whether this included residential homes in close proximity to the application site, such as those occupied by the interested parties.

It was noted that a temporary event had previously been held and noise had been audible. The Licensing Officer advised that only the Police and Environmental Health could object, and would take into account any previous complaints. An application for a temporary event would not be put out for public consultation.

The Environmental Health Officer, Ian Winter, joined the meeting.

Responding to questions and concerns from interested parties, the Environmental Health officer advised the following:

- In relation to noise sensitive properties, it was confirmed that local residents' dwellings in close proximity to the application site would be included in the definition.
- Regarding the issue of noise levels at property boundaries, and where a complaint had been made, the owner of the premises would be given the opportunity to address concerns in the first instance. Following which diary evidence could be submitted to EDDC in various ways, including online or paper diaries. In order to satisfy legal requirements in the event of a breach of conditions, noise monitoring equipment could be supplied and installed by EDDC Environmental Health at a resident's property for a short duration.
- Ambient noise levels vary depending on the surroundings and weather conditions. An ambient decibel level had not been set for this site as the location was generally quiet. Conditions stated that the noise level should not be more than 5 decibels above the background level at any given time. Site specific levels were more appropriate rather than a generic decibel level for East Devon.
- Where noise monitoring equipment was installed, this could be activated by a resident during a time of high noise levels and would record for a set period of time. This would provide Environmental Health with the evidence required to determine noise levels and feed back to the licence holder in the event of a breach and where further action was needed under Environmental Health legislation.
- A noise limiter would be fitted to equipment at the licensed premises and provided by the premises to ensure that levels did not exceed those permitted.
- Environmental Health had moved away from audibility clauses in conditions due to uncertainty and issues with enforcement. Conditions which set out decibel levels were clear and concise and more robustly meet with the licensing objectives.
- It was noted that the conditions included that music must be played through the system provided by Lymphstone Manor and not through equipment brought in by an entertainer.

The Chair advised that review powers were in place and, in the event of a complaint, and supported by sufficient evidence, the licence could be reviewed by the Sub Committee at a future date.

An interested party raised a concern regarding how realistic it was that even low levels of noise would not be heard beyond the boundary of the premises, given that a number of properties were only 50 metres away. In response the Environmental Health Officer advised that conditions would be imposed due to the proximity of the residential properties. Should the applicant not adhere to the conditions, the licence could be called back in for review.

The Chair queried whether the interested parties felt that they had had the opportunity to raise all their concerns through the questions to the Licensing Officer and the Environmental Health Officer.

In response an interested party noted that the pool complex would be licensed for up to 60 people and that access was by way of a gravel path which in itself created noise disturbance.

An interested party queried the submitted plan for the pool house which included the outside terrace area. The Licensing Officer advised that she had sought clarification from the applicant as to whether or not the terrace would be included in the licensable area, although regulated entertainment would be held indoors only.

The Licensing Officer further advised that, with regard to the licensable hours sought by the applicant, it was the Sub Committee's decision whether to grant the hours as sought or whether they should be amended.

An interested party advised that he and his wife worked long hours in demanding public sector work and needed to be able to rest at home undisturbed. He appealed to the Sub Committee to consider the hours which could not be policed all of the time and noise disturbance would be detrimental and intrusive.

In response to a query from an interested party regarding the report on noise levels, the Environmental Health Officer advised that noise assessments would be carried out at the time of any complaint. At that time, noise monitoring equipment would be installed and the complaint investigated.

In response to a query, the Environmental Health Officer further advised that noise levels have not been set, but the conditions include the requirement for noise not to exceed 5 decibels above the background noise level during the day from 7am to 11pm and no increase above background noise between 11pm and 7am. Background noise levels would change during the day depending on weather conditions at the time and therefore noise levels would be monitored at the time of assessment as a result of any complaint.

An interested party referred to the noise conditions in the grant of planning permission for the premises and asked that this be taken into account by the Sub Committee.

The Legal Advisor advised that any breach of planning conditions should be referred to the Local Planning Authority as the planning and licensing functions are separate regimes.

The interested party requested greater clarity on the planning condition regarding noise levels not being audible beyond the boundary and at noise sensitive properties.

In response, the Environmental Health Officer clarified that audibility had been found by the courts to be uncertain as it varies from person to person. For this reason, a decibel level had been set with regard to the licensing application as this was a clear, concise and enforceable condition.

The Legal Advisor advised that if the interested parties were content that their case had been put, the meeting could proceed to the next stage.

The Chair confirmed that none of the interested parties indicated that they wished to speak further.

The Chair then thanked all participants for attending the meeting and advised that the decision of the Sub Committee would be notified to all parties in writing within five working days.

Attendance List

Councillors present:

T Woodward

T Wright (Appointed Chair for this meeting)

S Gazzard (Appointed Vice-Chair for this meeting)

Councillors also present (for some or all the meeting)

None

Officers in attendance:

Lesley Barber, Licensing Officer

Rebecca Heal, Solicitor

Sarah Jenkins, Democratic Services Officer

Phillippa Norsworthy, Licensing Officer

Alethea Thompson, Democratic Services Officer

Anita Williams, Principal Solicitor (and Deputy Monitoring Officer)

Ian Winter, Environmental Health Officer

Councillor apologies:

None

Chair

Date: