

Minutes of a Meeting of the Licensing Act 2003 Sub Committee held in Council Chambers, Tedder Hall, Manby Park, near Louth LN11 8UP on Thursday, 18th August, 2022 at 10.00 am.

## PRESENT

Councillors Stan Avison, Graham Cullen and Sandra Campbell-Wardman.

Councillor David Andrews attended the Meeting as a Substitute.

Officers in Attendance:

Adrian Twiddy	- Principal Licensing Officer
Kim Robertson	- Legal Advisor
Caroline Currie	- Environmental Health Officer
Elaine Speed	- Democratic Services Officer
Lynda Eastwood	- Democratic Services Officer

Also in Attendance:

Jonathan Hyldon	- Bridge McFarland Solicitors
Frederick Howell	- The Turks Head
Joanna Faulkner Smith	- The Turks Head
Kai Appleyard	- The Turks Head
Michael Kheng	- Kurnia Licensing Consultants
Lyndsey Howis	- Resident
Darren Melton	- Resident

## **5. ELECTION OF CHAIRMAN:**

Councillor Stan Avison was duly nominated and upon being put to the vote, it was

RESOLVED

That Councillor Stan Avison be elected Chairman of the Licensing Sub-Committee for this Meeting only.

COUNCILLOR STAN AVISON IN THE CHAIR

## **6. DISCLOSURE OF INTERESTS (IF ANY):**

At this point in the meeting, Members were invited to declare any relevant interests.

- Councillor Graham Cullen asked that it be noted that he was a personal licence holder and that he knew Michael Kheng from Kurnia Licensing Consultants.

**7. APOLOGIES FOR ABSENCE:**

Apologies for absence were received from Councillor Adrian Benjamin.

**8. APPLICATION FOR THE VARIATION OF A PREMISES LICENCE:**

An open report was submitted by the Service Manager, Safer Communities which enabled Members to consider an application to vary the premises licence for the Turks Head, 1 Aswell Street, Louth, LN11 9BA. The application had received representations from local residents and the Council's Environmental Health Team.

The premises licence variation application was seeking to firstly increase the internal licensed area of the premises by adding a function room / restaurant area to the first floor of the venue. Secondly, to extend the external licensed area with the construction of a roof terrace to the first floor. The applicant had volunteered a terminal hour of 2300 Hours for use of the roof terrace.

A representation regarding the licence variation application had been received from the Council's Environmental Health Team (who were acting as a Responsible Authority under the Licensing Act 2003). Three representations had also been received from local residents.

The Principal Licensing Officer outlined the recommendations available to the Sub-Committee, page 2 of the report refers.

Mr Jonathan Hyldon representing the applicant was invited to make his representation to the Sub-Committee.

Mr Hyldon referred Members to the application details, page 1 of the report pack refers, which outlined adding a restaurant/function room area on the first floor and secondly, the construction of a roof terrace on the first floor.

Reference was then made to page 3 of the report pack with regards to the plan which was submitted. Mr Hyldon advised Members that he wasn't involved in the submission of the application that contained red-lining around some of the external area which wasn't currently licensed. A revised plan had since been submitted, page 14 of the applicant's bundle refers.

The Sub-Committee were provided with some background information with regards to the applicant, The Turks Head Louth Limited and were advised that Mr Howell was the owner and had been running the premises since 2013. He also had the help of his Designated Premises Supervisor (DPS), Joanna Faulkner and the Manager, Kai Appleyard. They worked well together and ran the premises well.

It was stated that Mr Howell was also the DJ at the venue and was in control of the sound system, noise etc. Mr Hyldon informed Members that around £300k had been spent on the premises in the last year and referred Members to photos of the Turks Head, pages 8 to 13 of the applicant's bundle refer.

Mr Hyldon commented that the license had been in its current form since January 2022 as the hours were extended at the end of 2021. Members were referred to the current hours that were granted and the list of activities, along with the times, pages 1 to 2 of the applicant's bundle refers.

Members were also referred to the Conditions Consistent with the Operating Schedule which must be adhered to, Annex 2 on pages 5 to 7 of the applicant's bundle refer.

Mr Hyldon referred Members to the additional photos that had been produced for the new first floor function room on the application, pages 18 to 21 of the applicant's bundle refer, and advised Members that he couldn't find anything that objected to that part of the application. He further commented that the premises would not be operating in any different way.

With regards to the new first floor external area, Members were referred to the photos provided, page 22 of the applicant's bundle refers. Mr Hyldon informed Members that the objector's photos showed the area from above and that the venue was surrounded by structures. The application that was submitted to the Committee for the external area applied for a closing time for this area of 11pm which was in line with planning legislation, however his client was aware of the concerns raised by the Environmental Health Officer. Therefore, in order to promote the partnership working, his client was more than happy to have the external area hours changed from 11pm to 10pm. Mr Hyldon's client also wanted to confirm that no regulatory entertainment would take place in that area either.

Mr Hyldon then responded to the Environmental Health Officer's representation and Members were referred to Appendix E, pages 25 to 28 of report pack refer.

Members were informed that the objection was based on the roof area and that six different residents had made complaints from approximately 20 metres to 110 metres from the Turks Head. Mr Hyldon further commented that when the Environmental Health Officer had spoken to Ms Faulkner, the DPS, she made it very clear that she didn't feel the noise was coming from the Turks Head and that it could have been coming from a number of other licensed premises in the surrounding area.

Mr Hyldon stated that with regards to the external area, it would be surrounded by first floor structures and if noise from that area was not managed it was likely to affect both neighbours in close proximity to the venue as well as those at a much greater distance, however the opening hours were being curtailed until 10pm and there would be no regulated entertainment.

Members were further informed that the premises had never received a caution or warning from Environmental Health in relation to noise at the property.

Mr Hyldon advised Members that the external area would operate with background music only and there would not be regulated entertainment as it would likely cause a public nuisance.

Mr Hyldon asked that consideration be given to reducing the proposed time period to 10pm if the Sub-Committee were minded to allow the application.

Mr Hyldon read through the details relating to a number of residential representations and a letter from Environmental Health dated 07/07/22 with regards to noise complaints, pages 27 to 28 in the applicant's bundle refer. Members were informed that no noise readings had been carried out by Environmental Health and as far as the applicant was aware there was no issue regarding noise monitoring at the premises. Mr Hyldon further informed Members that his clients were carrying out their own noise readings with their own decibel meter in the surrounding area and the noise was being picked up from nearby premises, The Wick and Oliver's Bar.

Mr Hyldon informed Members that a brochure, 'Turks Head Noise', page 28 of the applicant's bundle, had been distributed around the area anonymously, however, only three complaints were received from the whole area after the application was widely advertised.

Members were further informed that the police were not objecting to the application and neither were Public Safety from the Council.

Mr Hyldon outlined the details of the three representations, and Members were referred to their letters, pages 29 to 32 of the report pack. The first representation being Ms Lockie-Evans who was not in attendance at the hearing and the second and third being Ms Lyndsey Clark and Mr Darren Melton, who were both in attendance at the hearing. Members were also informed that the landlord of Ms Clark and Mr Melton, a Neil Crossland, was the ex-business partner of Mr Howell and they were no longer on friendly terms.

Members were then invited to put questions to Mr Hyldon.

The Principal Licensing Officer queried why there was a photo of a noise limiter in the pack if there was no requirement for one. Mr Hyldon explained that the photo was of a decibel reader which was used for reading noise. It was not a noise limiter as there was no requirement for one.

Mr Kheng queried what level of decibels was acceptable as a reading at a property and at what distance from the Turks Head the readings were taken. Mr Hyldon responded that Environmental Health dealt with that, however his clients had monitored noise themselves. They would listen and know what music was being played from their property and they were in contact by phone at the time whilst monitoring. Mr Howell also replied and stated that he had always used a noise monitor in his businesses. Since having the noise complaints, they had regularly undertaken walks around the area and

confirmed that noise issues were from other venues. Mr Kheng stated that didn't answer his question.

Mr Kheng queried how customers would buy drink as the function room plan did not include a bar. Mr Hylton advised that drinks would be purchased from the downstairs bar.

A Member queried whether the Turks Head had any readings available from the noise monitoring that they had carried out. Mr Hylton advised Members that the DPS had the readings on her phone along with a photo showing the reading outside Ms Locke-Evans' property.

Caroline Currie, Senior Environmental Health Officer, was invited to make her representation to the Sub-Committee.

The Senior Environmental Health Officer outlined her qualifications and work profile and informed Members that Environmental Health had raised a representation to this proposal based on prevention of public nuisance due to noise that was likely to impact on those who lived in, worked in and visited the area. Their concern related to the proposed roof terrace and the representation focused on that area. Members were referred to Appendix E, pages 25 to 28 of the report pack refer.

The Senior Environmental Health Officer advised that they were yet to serve notice for statutory nuisance. She explained that it was a town centre location so they didn't expect silence, however, it was not considered reasonable for local residents to be exposed to excessive noise where best practises had not been employed to control noise. Environmental Health advised that even if they had received no complaints to this application, they would have still raised a representation to the proposed first floor area as it was unlikely to offer much sound attenuation.

The Senior Environmental Health Officer further commented that they welcomed the two changes that the applicant had submitted that day to remove the regulated entertainment and to reduce the time to 10pm.

The Senior Environmental Health Officer was aware that live and recordable music was not licensable between the hours of 8am and 11pm for an audience of up to 500 people in such premises and should the premises continue with the first-floor roof terrace, she would ask that consideration was given to remove the exemption and impose conditions to restrict such activity.

Members were then invited to put questions to the Senior Environmental Health Officer. None were received.

Mr Michael Kheng, who was representing the residents, was invited to make his representation to the Sub-Committee.

Mr Kheng explained that he was representing all three residents, Lyndsey Howis and Darren Melton who were in attendance and Melanie Lockie-Evans who sent her apologies.

He referred to page 11 of the bundle and pointed out the three residential properties, marked with three green dots.

His concern was that if the application was granted for a function room upstairs, inevitably a disco would appear as the next logical step. It was further highlighted that the photographs in the applicant's bundle showed what appeared to be single glazed windows which could open so there was the possibility of noise leaking out of the function room. There had been no proposals to soundproof the function room or to install a noise limiter or an acoustic report carried out for the building and noise was currently leaking out of the building causing a noise nuisance to residents. Six residents had made complaints to EHO to date

Mr Kheng highlighted that only the three Director's were at the hearing, and was disappointed that other members of staff were not as it was very clear that the current conditions on the license were being breached.

Mr Kheng then requested to play a short video. Adrian Twiddy suggested a short adjournment to get the video equipment set up. Mr Kheng confirmed he was happy to show the video later. He explained that the video showed the outside of the premises on 3<sup>rd</sup> July 2022 at 2.30am which confirmed that the applicant was not complying with current conditions of the license and doubted compliance if the first-floor area was allowed.

Mr Kheng again raised his concerns with the neighbours who lived close by and how this proposal to extend to a first-floor area would affect them.

Mr Kheng was pleased to hear that if the terrace area was granted, the applicant would seek to have no regulated entertainment on the terrace but as the Senior Environmental Health Officer had confirmed, before 11pm, live and recorded music was not classed as regulated entertainment. The EHO confirmed that a condition could be added to the license to say that that area would be exempt from deregulation, however needed to clarify whether deregulation had to be considered through a review. A brief discussion ensued with the Principal Licensing Officer and Mr Kheng with possible suggestions of wording.

Further to a brief discussion, it was put forward that the Sub-Committee go into Exempt Session to discuss material Mr Kheng had provided for Members' consideration.

It was Proposed and Seconded that the public and press be excluded from the meeting.

**RESOLVED**

That under Section 100(A) of the Local Government Act 1972, the press and public be excluded from the meeting of the following items on the grounds that, if they were present, there could be disclosed exempt information as defined at paragraphs 1, 2 & 7 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

It was proposed and seconded that the Hearing move back into Open Session.

At this point in the Meeting, Mr Kheng played the video showing that people were outside with open drinks vessels and outside of the seating area which was allocated on the pavement space, therefore considered that the Turks Head was in breach of its licensing conditions.

Mr Kheng then handed over to Lyndsey Howis and Darren Melton, who confirmed that they currently had problems with noise at the premises and they feared that by granting this license the noise breakout from the function room would cause them further distress.

Following which, both parties summed up their case.

*N.B The Committee retired for their deliberation at 12:17pm*

*N.B The Committee re-convened at 1:13pm*

The Licensing Sub-Committee read and heard all of the information before them. They heard from Mr Jonathan Hyldon representing the applicant, Mrs Caroline Currie from Environmental Health and Mr Michael Kheng representing the objectors (other parties) to the licence variation application.

The Sub-Committee heard from the licence applicant that they wished to reduce the terminal hour for the roof terrace to 2200 Hours and they would not have regulated entertainment on the terrace in response to the objections (representations) received. The Sub-Committee also noted measures that the applicant had taken to measure noise from the premises.

Mr Kheng addressed the Sub-Committee providing information about current noise issues with the premises that the objectors had experienced. He provided a video to show people outside of the premises and noise coming from the premises. Mr Kheng stated there would 'inevitably be a disco up there' referring to the first-floor area.

The Sub-Committee heard from Mrs Caroline Currie, the Senior Environmental Health Officer, who welcomed the reduction in hours and removal of regulated entertainment from the roof terrace.

The Sub-Committee having considered all of the information decided to grant the licence variation as applied for in respect of the first-floor area, but with the requirement that the windows on the first floor remained closed. In respect of the roof terrace, the Sub-Committee decided to reduce the terminal

hour to 2200 Hours and agreed to the removal of regulated entertainment from that area.

Having considered the representations the Sub-Committee felt that it was appropriate for the promotion of the prevention of public nuisance licensing objective that background music only should be played in the roof terrace area.

The Sub-Committee noted the request by the Other Parties for door supervisors to be provided on the first floor and roof terrace – however, they had not received evidence sufficient to warrant additional door supervisors noting the premises already had a requirement for door supervisors at the premises.

The Sub-Committee noting the application was a variation to a current premises licence decided that no further conditions were appropriate for the promotion of the licensing objectives.

Following which, it was

#### RESOLVED

That the licence variation was modified by:

- reducing the terminal hour for the roof terrace from 2300 to 2200 Hours.
- removing the provision of regulated entertainment from the roof terrace
- and indicating that only background recorded music may be provided in the aforementioned area.
- amending the conditions of the premises licence to include a requirement that the windows on the first floor remain closed.

Mr Howell was advised of his Right to Appeal to the Magistrates Court against the above revocation decision.

Any appeal must be made to the Lincoln Magistrates Court, The Court House, 358 High Street, Lincoln, LN5 7QA, (Tel: 01522 528218) within 21 days of the date of the decision notice.

The Meeting closed at 1.15 pm.