



Notification of Determination

Review Hearing

9 September 2022

Applicants: Jeroen 't Hart and John Davidson

Premises: Sunset Bar (formerly Cool Runnings) 78 The Esplanade, Weymouth, Dorset DT4 7AA

Premises Licence Holder: Edmon Limited

Sub-Committee members: Cllrs J Andrews (Chairman), M Barron and S Williams.

Decision

To REVOKE the Premises Licence.

Reasons for the Decision:

The Sub-Committee was addressed by the Licensing Team Leader who outlined her report and the reason for the hearing.

The report set out that the Premises licence permitted the sale of alcohol on and off the premises Monday to Saturday from 09:00 to 23:59 and Sunday 09:00 to 23:00. The performance of live music and playing of recorded music (both indoors) were additionally permitted for the same days and hours. Late night refreshment (indoors and outdoors) was licensed from 23:00 to 23:59 Monday to Saturday. The request for a review of the Premises Licence had been received from Jeroen 't Hart and John Davidson. The grounds for the review related to the 'playing of extremely loud music typically from 21:00 to 24:00 on Friday and Saturdays' which affected the neighbours' ability to sleep, watch television or carry out a normal conversation in their properties. In addition reference was made to rowdy behaviour associated with the Premises.

The Licensing Team Leader stated in her report that representations had been received from several of the Responsible Authorities namely, Dorset Police, Dorset Council Environmental Protection, Dorset Council Planning and Dorset Council Licensing. In addition representations had been received from a Ward councillor and five people who either lived or had businesses in the area.

In the written representation submitted by Dorset Council Licensing (in its capacity as a Responsible Authority), the opinion was expressed that the Premises were undermining the licensing objective of the prevention of public nuisance, due to the volume of the music played at the Premises. The Licensing Authority had undertaken a joint visit to the Premises with the Environment Protection Team in July 2022, and the Licensing Officer had described the music volume as 'incredibly loud' which made the flat above the Premises 'unliveable'. The Licensing Officer had written to the holder of the Premises Licence, Edmon Limited and

the Designated Premises Supervisor setting out the seriousness of the issues, including a breach of a licence condition, but nonetheless no reply was received to his correspondence.

In the written representation from the Ward Councillor reference was made to the fact that in previous years no complaints had been made about the Premises, but it was now causing complaints due to noise. The Councillor asked that consideration be given to adding further conditions to the Premises Licence to control the noise, or if that was not thought possible then the licence should be revoked.

The written representations from members of the public either living or having businesses close to the Premises, referred to exceptionally loud noise which vibrated through the building even to the third floor, and antisocial behaviour including drunkenness, fighting and drug taking. Comments were made that the situation was impacting negatively on residents' health and wellbeing and that visitors staying in nearby hotels were intimidated when walking past the Premises or waiting at the bus stop. Several guests had been reported as saying that they would not return to Weymouth as a result.

In response to questioning the Licensing Team Leader confirmed that no information had been submitted by the Premises Licence Holder prior to the hearing.

The Sub-Committee heard from the applicants for the review. Jeroen 't Hart amplified the statements made in his written application for the review and stated that the noise levels from the Premises made living in his flat unbearable. The music was so loud that it was having a detrimental effect on his quality of life such that he was unable to have a normal conversation, watch television or sleep in his property whilst the music was being played in the Premises. He referred to the bass beats of the music causing the windows in his flat to shake. The property was a listed building and consent would be required to make any changes to the windows. Mr 't Hart clarified that in addition to the nuisance experienced through playing of extremely loud music, the behaviour of the people in the Premises and using the outside area was also a major issue, due to shouting, singing and inappropriate language. In addition bright lights were used in the Premises which flashed out onto the outside area. Mr 't Hart felt that the area was not safe due to fights breaking out which were fuelled in his view by alcohol and drug consumption. He referred to the fact that a bus stop was just a short distance down the road from the Premises but people using the bus stop felt anxious and intimidated by the behaviour of customers of the Premises. Mr 't Hart asked the Sub-Committee to stop the Premises from being able to play music and to reduce their licence to sell alcohol to between 09:00 and 20:00 in order that he and other residents could use their dwellings as they were intended.

Linda Davidson spoke on behalf of John Davidson and had also submitted a written representation in her own right. She explained that they lived above the Premises. The Premises had previously been a fish and chip shop and then a café/bar which closed in the early evening. They only played soft background music which had not caused them any disturbance. However when the Premises changed its format with a new tenant, they started to experience serious issues with loud music played into the evening. She stated that the property is a listed building with no soundproofing and the sound from the music came through the floor of their property. Mrs Davidson explained that the new tenant had spoken to them about his plans for the Premises and when she and her husband started to be disturbed by the noise levels in February 2022, they contacted him directly by email. They had also gone into the Premises several times to ask for the music to be turned down but were told by the manager that it was only for four hours to attract customers and the manager refused to turn the sound down. Mrs Davidson stated that they were sworn at and ridiculed for asking for the sound level to be reduced. She said that in May 2022 the noise level increased, and Friday and Saturday nights became intolerable and they either had to go out or sit in their kitchen which was affected by the noise to a lesser degree. Mrs

Davidson described the deleterious effect the situation was having on their mental health, having endured the noise and anxiety for some six months. She stated that they could not have family or friends round in the evening due to the noise and they had been forced to cancel a family celebration because they could not have people staying overnight due to the disturbance caused by the Premises. Mrs Davidson explained that she felt intimidated and no longer went down to their garage alone when the Premises were open.

Mrs Davidson stated that she had kept a diary of the noise problems they had experienced and had been very relieved when the Environmental Protection Team had visited the Premises and her home to assess the situation and heard the noise for themselves. She thought that the statutory Noise Abatement Notice would be effective in dealing with the noise but as it had not produced the desired effect.

In response to questioning Mrs Davidson stated that the noise was ongoing and if anything had increased. They had tried to speak to the manager but had been told that the licence permitted them to play music as they wanted and to leave the Premises.

The Responsible Authorities who had submitted representations addressed the Sub-Committee. An officer from Dorset Council's Environmental Protection Team stated that they had been alerted to the venue in mid-May this year by a complaint from the public, since then a further three complaints had been made. The complainants had stated that the problems had started around February 2022. The Officer said that a meeting had been held with two directors and a manager from the Premises Licence Holder, Edmon Limited on 1 July 2022, the purpose of which was to discuss the issues and possible the steps that could be taken before any formal action.

Noise logs were completed by complainants and a visit to the Premises and one of the complainant's homes was carried out on 15 July 2022. The officer stated that the music was so loud when they arrived at the Premises around 22:30 that communication was only possible by sign language. She explained that the noise registered at 98 decibels on the dance floor and hearing loss is possible at 85 decibels. An assessment was made of the noise in the complainant's home and during that visit a senior Environmental Health Officer determined that a statutory noise nuisance existed. As a result on 1 August 2022 Noise Abatement Notices were served on Edmon Limited and the Designated Premises Supervisor. The officer confirmed that noise recording equipment had been placed in the complainant's home last weekend and she could see that the button had been pressed several times to indicate that the noise level was an issue but unfortunately the equipment had not been working properly and no recordings were made. The Officer stated that the situation could not be allowed to continue as it was.

The Sub-Committee was addressed by Sergeant Gosling from Dorset Police. The Officer stated that he had provided as much information as possible in writing before the hearing. He said that it was unusual for residents to seek a review themselves as it was a daunting prospect, so it showed the degree to which they were impacted by the operation of the Premises. Sergeant Gosling explained that they had concerns about the Premises and investigations were ongoing so he was limited in what he could say. Dorset Police followed a five-stage process where premises come to their attention to try to work with licence holders to resolve problems quickly through collaboration. In circumstances where this process was not successful the Police would seek a review themselves and, in this case, they may well have done that in due course.

In the written representation from Dorset Police reference was made to a joint visit to the Premises with Environmental Protection Officers on 12 August 2022. Although the visit had been pre-arranged the manager was angry and unhappy that it was taking place and asked the officers to leave. Reference was made to the aggressive way the manager addressed

the officers and her unwillingness to work with them. It was also noted that complaints were later made to the Environmental Protection out of hours service and on the officers' return to the Premises the music appeared to be even louder than before and could be heard on the other side of the road. The various options available to the Sub-Committee were considered in the submission. It was stated that action had to be taken to address the situation but given that some conditions on the current licence were not being adhered to there was little confidence that any further conditions would be followed. Removal of the DPS or suspension of the licence was not suggested to be likely to result in any significant change to the operating standards at the Premises. Removal of a licensable activity such as the sale of alcohol was mentioned but this could make it potentially an unviable business. Whilst the revocation of the licence was acknowledged to be a last resort it was appropriate where a premises is detrimental to the community.

The Sub-Committee was addressed by Jeremy Woodcraft solicitor for the Premises Licence Holder. Mr Woodcraft stated that this was a case where revocation had been mentioned by the Responsible Authorities, but he was looking for a solution that would stop short of that but would also give everyone the comfort that the nuisance would cease. Clearly live and recorded music on Friday and Saturday nights was the issue in this case. The Sub-Committee had the ability to make a statement that conditions would apply to the playing of live and recorded music where a review had been sought. The Sub-Committee could impose conditions such that the Premises had to ensure there was no encroachment on the quality of life of residents and the Premises Licence Holder/DPS would have to comply. They could also take music out completely, but whilst the financial aspects were not relevant for the Sub-Committee, music was a key component of the licence and the most money was made during the evenings. Whatever steps were taken they had to be proportionate.

Mr Woodcraft stated that acoustic glass had been installed which showed the willingness of his client to act to address the issues. His client had also instructed a professional acoustic company to carry out a survey. He said his client was willing not to play live or recorded music until such time as a noise management plan was produced and signed off by Environmental Protection. His client would have to comply with the conditions, which could be easily monitored, and further action could be taken if he failed to do so. Conditions were already in place to control noise outside the Premises and his client would be willing to close the outside area at 10pm. Mr Woodcraft noted that the Police had identified that there may potentially be a drug issue, but as the Officer stated there is a five-step plan which is normally gone through before action is taken and at this point that stepped plan approach had not commenced.

In response to questioning Mr Woodcraft confirmed that the DPS is in charge of the Premises. The DPS and directors from the company holding the licence were not in attendance at the hearing today but the two managers were present. In response to reference by Sergeant Gosling to employing SIA door staff at the weekends Mr Woodcraft stated that his client would be willing to employ SIA door staff when music was being played until thirty minutes after it ceased. However more thought would have to be given to define when door staff were necessary. Mr Woodcraft asked that his client be given the opportunity to see what steps it was possible to take to address the noise.

The Sub-Committee carefully considered the documents presented to them and the written and oral representations made by all parties. They had regard to the Licensing Act 2003, the Licensing Objectives, the Section 182 Statutory Guidance and the Dorset Council Statement of Licensing Policy.

The Sub-Committee was satisfied that there was a significant level of noise nuisance caused by live/recorded music played at the Premises, together with noise and anti-social behaviour

from customers in the external area and immediately outside the Premises. The Sub-Committee found the combination of the evidence from the residents/business owners and the three Responsible Authorities very persuasive.

As a result of the information presented to them the Sub-Committee took the view that up until about February 2022 it appeared that no problems had been experienced with the Premises because they were run as businesses which did not operate late into the evening and only played what amounted to background music. The issues had arisen when the venue was changed into a more late-night venue with music. The building was an old building and the sound from the Premises was able to infiltrate the dwellings above it. The change in character of the offer of the Premises, namely playing loud music into the evening, had caused considerable distress to those living near the Premises and those operating businesses in the area. The Sub-Committee acknowledged the level of intrusion felt by the residents living above the Premises and the steps that they had taken to try to work with the licence holder to find a mutually acceptable level of music.

It appeared to the Sub-Committee that the Responsible Authorities who were party to this review had made significant efforts to work with the Premises Licence Holder/DPS to resolve the issues prior to the review being called for by two members of the public. Advice had been given by the Licensing Authority, but the Premises Licence Holder /DPS had not responded to the detailed letters. Two directors of the company holding the premises Licence had met with members of the Environmental Protection Team but nonetheless the situation did not improve and the fact that the Environmental Protection Team considered it necessary to serve a Noise Abatement Notice in connection with a statutory noise nuisance, emphasised the seriousness of the situation, yet it appears that since the service of the Notice the noise was stated to have become worse.

The Sub-Committee was particularly disturbed to hear of the unacceptable behaviour of the lady who presented herself as managing the Premises when the Responsible Authorities (Police, Licensing and Environmental Protection) attended at the Premises. The behaviour showed contempt for the licensing objectives and the role of the Responsible Authorities. Video footage submitted with review request exposed further inappropriate behaviour and encouragement to others to do the same. The Sub-Committee noted that the licence holder and DPS did not attend the hearing.

The Sub-Committee considered whether further conditions, including conditions related to live and recorded music, could be added to the licence to address the issues, and promote the licensing objectives. They concluded given the behaviour of the Premises Licence Holder and managers of the Premises in relation to the conditions currently on the licence, the behaviour towards the Responsible Authorities and the fact that a Noise Abatement Notice had to be issued, that they had no confidence that revised conditions would be complied with. The Sub-Committee determined that the removal of the DPS or the exclusion of a licensable activity from the scope of the licence was not appropriate.

After careful deliberation, the Sub-Committee concluded that it was appropriate to revoke the licence. The Sub-Committee recognised that this was a serious step to take and did not take it lightly. In coming to this conclusion it took account of all the information before it. It noted that the situation had extended for a period of over 6 months and had had a considerable impact on the residents' quality of life and ability to enjoy their own homes. The applicants for the review had tried to come to a compromise with the licence holder without success, and considerable advice and assistance had been provided by the Responsible Authorities, but the situation did not improve. It appeared that the licence holder did not take the issues seriously for some considerable time.

Right of Appeal:

Any party who wishes to appeal the decision has 21 days from the date of receipt of this notice to submit an appeal to Weymouth Magistrates Court, Westwey Road, Weymouth, DT4 8BS. You may wish to seek independent legal advice in relation to any such appeal. The Court may make an award of costs against a party. If an appeal is successful, the Council will resist any costs application and if an appeal is unsuccessful an application for costs will be made by the Council.

Councillor J Andrews

Date 9 September 2022