

LICENSING SUB-COMMITTEE

Minutes of the meeting held at 10.00 on 22 April 2024

Present:

Councillor Tony Owen (Chairman)
Councillors Christine Harris and Melanie Stevens

Also Present:

4 APPOINTMENT OF CHAIRMAN FOR THE MEETING

Councillor Tony Owen was appointed Chairman for the meeting.

5 DECLARATIONS OF INTEREST

No declarations of interest.

6 SJAYZ RESTAURANT, 254 HIGH STREET, ORPINGTON, BR6 0LZ.

The application:

The premises is a restaurant on the ground floor of a three storey building with residential accommodation above. The application sought to vary the current premises licence by extending the licensed hours for the sale of alcohol on and off the premises and to add the performance of live music, the playing of recorded music and the provision of late night refreshment.

After discussions with the police, the following times for live music, recorded music, supply of alcohol and late night refreshment was applied for, namely Sunday -Thursday 08.00-00.00 hours, Friday and Saturday 08.00 – 02.00 hours with a seasonal variation for New Years Eve 08.00 – 03.00 hours. The committee was advised that last orders for alcohol and food on a Friday and Saturday night were 01.30 hours.

The case for the applicant:

The restaurant serves mainly African cuisine to customers both nearby and from further away, including Sidcup, Bexley, Dagenham and Enfield. The licence was transferred to the current business in October 2023. Since opening, a trend has been observed that many customers come in later. The business wished to accommodate those customers with revised hours.

Since opening, the business has applied for and traded to later hours under TENS. (Temporary Event Notice). When trading under the TENS, a DJ is employed but the sound is transmitted through a house system. The DJ is

engaged to provide the choice of music requested by customers. The business was aware that residents from the maisonettes above had concerns regarding the level of noise and had sought to address their concerns. Sound insulation had been installed for a ten metre distance from the front of the premises. Double doors had also been installed. The loudspeakers had also been repositioned to reduce the transmission of sound, both through the air and by vibration. When using TENS, the music had been played softly. After completion of the works, the business had not received complaints which was an indicator of their efficacy. Although a complaint was received during the last TENS, the works were still in progress.

The business was aware of the planning condition providing that the business shall not operate before 07.00 and 23.00 hours Monday to Saturday and not before 10.00 and 22.00 hours on Sundays and Bank Holidays. On 24th March 2024, an application to vary the condition was submitted on the planning portal. The application had not yet been acknowledged by the Planning Department.

The application indicated that it's intention was not to make residents lives any worse. It was willing to take extra steps required by the Council. For the business to thrive, needed an extension of hours.

The case for the objectors

In addition to the written representations the Sub-Committee also received verbal representations.

The Noise Nuisance Officer advised the business that a complaint had been received and local residents had been provided with log sheets to record any noise. These had not yet been returned and therefore a formal investigation had not been progressed. In the absence of technical details, the Noise Nuisance Officer (NNO) could not say if the insulation measures taken by the business were effective. However, there was a concern that if the loudspeakers were placed on a platform, notwithstanding their relocation, noise could transmit to the maisonettes above. There was no other premises in Orpington open at 02.00 hours. The NNO was aware of only one business that was open at 1am which was a pizza restaurant which closed at 1am and only played incidental music. Orpington was not a town that had many late night venues which would make any breakout noise from the premises more apparent. The Noise Team would look to assess whether a statutory nuisance had arisen.

The committee was addressed by the Planning Officer who confirmed that a planning application to vary the condition had been submitted to the Council.

Oral representations were heard from three local residents. They felt that it made no difference to complain directly to the business about the noise from the premises, which would not be turned down. They said the noise could be heard in their living accommodation. A example were given of a resident being prevented from hearing their own computer. We were told of a child

being affected by the noise and unable to sleep because of it. Noise could be heard in the second floor bedrooms. It was necessary to turn the TV up louder than usual to enable the sound from it to be heard above the noise. In particular, base sounds could be heard.

Reasons for decision:

Members considered the amended application, the written and oral representations, the Council's Statement of Licensing Policy and statutory guidance. The committee concluded that the application in its current form would cause harm to the licensing objectives and should be refused.

The committee noted the character of the premises with a ground floor restaurant and residential maisonettes above. It also noted the planning permission with current restrictions on hours of opening. The committee considered all representations, both written and oral, as to the levels of noise being generated by the current business and in particular when using TENS. Residents clearly had found the levels of noise excessive (for example "our flat has 2 floors so last weekend we had to go upstairs to our bedrooms and still we couldn't sleep because we could hear everything from there too", "we cannot even watch TV in the living room as you can feel the music", "it affects my ability to sleep", "this really has been putting a lot of pressure and stress on my daily life routine lately, and is affecting my life, my sleep and depriving me from having a normal routine").

The committee also considered the measures that the business had taken to address noise breakout by introducing measures such as double doors and sound insulation over part of the premises. The planning application was at a very early stage and there had been no independent assessment as to the efficacy of the measures. The Noise Officer raised an objection to the application and expressed some doubt as to whether the steps were sufficient (e.g., in terms of the isolation of the speakers).

Having considered everything, the committee was not happy that the measures taken to date to prevent breakout noise were effective. It accordingly was not satisfied that the amended application could be approved without the residents above being subject to an unreasonable level of breakout noise.

The committee was impressed by the evidence from the Noise Officer as to the character of the area, with few late night/early morning venues and only one open until 1am. The town was quieter during these hours and any noise more apparent because of that. The view of the committee was that given the constraints on the building, that it would be acceptable for the premises to trade until 2am. As Orpington had numerous residents living above the High Street premises it had a residential character outside of the current business hours.

Licensing Sub-Committee
22 April 2024

For all these reasons the committee was not satisfied that the application could proceed without harm to the licensing objectives in terms of prevention of public nuisance and resolved that it should be refused.

Decision

That the amended application to vary the premises licence at Sjayz Restaurant, 254 High Street, Orpington Kent BR6 0LZ be refused.

Chairman