

Memo

To Licensing - Andrea Bull, Senior Licensing Officer
From Daniel Power, Regulatory Officer (Environmental Health)
Date 9th May 2023

Application Reference - 23/00321/LAPVAR
Environmental Health Reference - 23/00566/CONSUL

Proposal - Application for a Premises Licence Full Variation

Location - The Garden, High Street, Cowes, PO31 7RR

Further to my representation on behalf of the Environmental Health Department, submitted to the Licensing Authority on 19th April 2023, I wish to disclose additional information which I have considered pertinent with reference to the aforementioned application.

I enclose my initial submission which includes an accompanying venue risk assessment, indicating the proposed variation posed a medium risk in respect of the continued promotion of key licensing activities, most notably the prevention of public nuisance. Moreover, the increased risk rating, was considered as necessitating the addition of conditions to the existing premises licence to mitigate the impact of noise emissions associated with the formal use of the garden area in particular.

Previous Noise complaint history

The Environmental Health Department have received two complaints with reference to alleged noise nuisance associated with activities including loud music and patron noise originating from The Garden, High Street, Cowes, PO31 7RR. A summary of each is provided here:

1. **23/00321/COMNOI** – The complainant cited concerns regarding loud music and patron noise. The latter issue was described as particularly disrupting as the evening progressed and was said to have had the effect of causing disruption to the resident in their attempts to sleep and achieve rest within their property.

The complaint was received on 19th February 2023, whilst the resident referred to an event which had occurred on 4/5th February 2023, during which music noise levels and the associated noise of patrons were described as intrusive by the resident. The event described was associated with the use of a Temporary Event Notice referenced **23/00076/LATENL**.

The complainant did not return diary sheets indicating further disturbance following the department's initial intervention, however, the complainant had cited the adverse weather restricting the use of the outside parts. Nevertheless, the complainant sought to reiterate the extent of the disturbance associated with recorded music and patron noise during the use of the garden in more accommodating weather conditions.

2. **23/00492/COMNOI** – The department were notified of a further complaint on 10th March 2023, indicating the sporadic use of the premises rear garden caused significant disturbance, whilst the playing of recorded music during the day from this location had the effect of impeding the use of the neighbouring resident's garden.

The department have not received the complainant's returned diary sheets; however, the complainant had advised at the time of the complaint, that whilst the sporadic use of the garden in colder weather caused disruption, during warmer weather its impact is exacerbated.

In respect of the complaints received, I've considered it necessary to provide an approximate location of their immediate proximity. Figure 1 highlights the distance between the licensed premises and the noise sensitive receptors.

Figure 1 – Aerial map of High Street/ Crown Court, Cowes



Locations 1 & 2 relate to noise sensitive receptors located at Crown Court, Sun Hill, Cowes, PO31 7HZ

The areas highlighted are situated approximately 25 metres from the lower rear garden parts of the licensed premises referred to as The Garden, High Street, Cowes, PO31 7RR.

Noise Monitoring

You'll note that my representation included reference to conditioning the hours of use in respect of the premise's outdoor parts, this was considered necessary given the limited 'distance transmission path' between the source and residential receptors and as a result of the limited attenuation available, considering the outdoor setting, to address the sharp variations in patron noise as the evening progresses and the existing ambient noise levels local to the high street, decrease.

To confirm, I recommended the following conditions in respect of the hours of use, following my initial discussion with the applicant:

1. ***The use of the external area referred to as the 'garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***

***Sunday-Thursday –09:00 until 21:00hrs
Fri/Saturday –09:00 until 22:00hrs***

2. ***The use of the external area referred to as the 'upper garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***

09:00 until 21:00hrs Daily

Given the limited use of the outdoor parts at present, I considered it necessary to review the ambient noise levels during a weekday evening between 21:00 and 22:00hrs . The reason for monitoring was to compare the

existing ambient noise levels in the absence of the premises external parts operating at full capacity with the projected noise levels during their use (residual levels).

At this point it is necessary to stress that there is no widely agreed assessment procedure for the assessment of noise from patrons in beer gardens. However, a comparison is necessary in order to review the impact of patron noise in respect of the existing ambient noise levels.

The monitoring occurred on Thursday 4th May 2023 between 21:00 and 22:00hrs. Furthermore, a breakdown of the monitored noise levels is provided via **Table 1**.

Table 1 – Ambient Noise Assessment between 21:00 -22:00hrs

Date	Time	Location of Monitoring	LAeq.15mins	LA90	Highest LAmax (Obtained externally)
04/05/2023	21:05-21:20hrs	Land between 10 & 11 Crown Court, Sun Hill, Cowes, PO31 7HZ	39.8dB(A)	36.7dB(A)	58dB(A) <i>Distant car horn</i>
04/05/2023	21:25-21:40hrs	Land neighbouring 1 Crown Court, Sun Hill, Cowes, PO31 7HZ	40dB(A)	36.8dB(A)	58.4dB(A) <i>Nearby vehicle movement</i>

The above noise parameters are described below:

LAeq

The LAeq is essentially an average noise level. More specifically, it shows the equivalent amount of energy in a given period for a fluctuating source as if it were a steady continuous noise level.

LA90

The LA90 is used to give an accurate approximation to the background noise level.

LAmx

The LAmx shows the highest noise level reached in a given time period.

The aforementioned ambient levels outlined via **Table 2** suggest that despite the residential area to the rear of the licenced premises being located within close proximity of a high street, the ambient noise levels are fairly low and consistent with a Quiet Residential Area characterised at approximately 40dB(A) (*Noise Awareness, 2023*).

Accordingly, whilst an expectation of commercial noise within close proximity of the high street is reasonable, its worth noting its likely impact given the existing ambient noise levels obtained, particularly after 21:00hrs during a weekday.

As a means of assisting with a comparison here, I've made use of voice sound pressure level data, this is provided via **Table 2**.

Table 2 – Voice Sound Pressure Level (SPL)

Activity	Sound pressure Level dB(A) 1m (SPL)
Raised conversation	70-80dB(A)

Source: Handbook of Noise Control, 2nd ed. McGraw Hill, 1979

Scenario **Table 3 & 4** outlined on page 4 provide an assessment in respect of the additional noise source (Patron Noise) further to the existing ambient noise levels in their absence. Its worth noting that the associated

noise levels will differ as a consequence of the varying eventualities which may influence noise levels at any one time, these include but are not limited to the capacity of the outdoor space, whether patrons are seated as opposed to standing and the manner/behaviour of the patrons in attendance.

Table 3 - Scenario A – 70dB

Capacity	Distance Attenuation Calculation (25m)	Projected Noise levels @ NSRs LAeq	Excess over Ambient (Weekday) (Location B)
1 Table	70 (SPL) – 20xlog (r (25-Distance)) – 8dB	34dB(A)	- 6dB
6 Tables (70+10log(6))	77.8(SPL) – 20xlog (r (25-Distance)) – 8dB	41.8dB(A)	+1.8dB
8 Tables (70+10log(8))	79(SPL) – 20xlog (r (25-Distance)) – 8dB	43dB(A)	+3dB

Table 4 - Scenario B – 80dB(A)

Capacity	Distance Attenuation Calculation (25m)	Projected Noise levels @ NSRs LAeq	Excess over Ambient (Weekday) (Location B)
1 Table	80 (SPL) – 20xlog (r (25-Distance)) – 8dB	44dB(A)	+4dB
6 Tables (80+10log(6))	86 (SPL) – 20xlog (r (25-Distance)) – 8dB	50dB(A)	+10dB
8 Tables (80+10log(8))	89 (SPL) – 20xlog (r (25-Distance)) – 8dB	53dB(A)	+13dB

Accordingly, as opposed to assessing whether the projected noise levels (Patron noise) are likely to amount to a nuisance from the neighbouring noise sensitive receptors, I've assessed their potential perceptibility as well as its impact of the existing acoustic environment. In doing so, I've applied a distance attenuation of 25 metres between the source and receptor.

At a minimum its likely that as the evening progresses and the residual noise levels (in the absence of patron noise) generally reduce, the associated noise activity from the licensed premises will be clearly perceptible from the nearest residential receptors.

It's worth pointing out that the noise levels associated with the use of the garden will ebb and flow, nevertheless, sharp variations in patron noise closer to that reflected in Scenario B, which is considered a worse case scenario are likely to cause noise disturbance in the absence of suitable conditions.

In assessing the acoustic profile of the identified noise source, the intermittent nature of these variations in patron noise will only serve to increase annoyance.

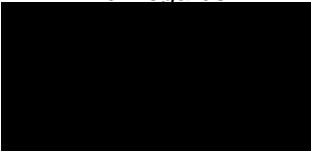
Conclusion

Consequently, the offering of conditions by the Environmental Health Department, seek to promote the public nuisance objective and mitigate the likelihood of noise disturbance. These efforts simultaneously attempt to establish a balance between ensuring the premises may take advantage of the outdoor parts with a reasonable expectation of commercial noise whilst ensuring this is not at the detriment of local residents.

Therefore, I consider the approach to be consistent with Paragraph 2.5 of the local authority's Statement of Licensing Policy 2019-24.

Should you require any further information please do not hesitate to contact me on 823000 Internal: Ext 6047.

Kind Regards



Daniel Power
Regulatory Officer

Enclo. 1) Environmental Health Representation (19.04.2023)
2) Venue Risk Assessment

Bull, Andrea

From: Power, Daniel
Sent: 19 April 2023 12:02
To: Licensing; Bull, Andrea
Cc: Captain Takeout
Subject: Environmental Health, Consideration of Premises Licence Full Variation - 23/00321/LAPVAR
Attachments: Venue Risk Assessment - The Garden - 23 00321 LAPVA.pdf

Afternoon Team,

23/00321/LAPVAR

Application for a Premises Licence Full Variation – The Garden, High Street, Cowes, PO31 7RR

I've reviewed the above application which includes formalising the use of the outside parts as well as the upper floor of the aforesaid premises, whilst considering the potential effect in respect of the promotion of key licensing objectives, most notably, the prevention of public nuisance. I understand the application does not include any amendments to the hours of licensable activity.

You'll note that I had previously, objected to a Minor Variation Application referenced **23/00243/LAPVAM**, which I understand was withdrawn by the applicant, as a result of the Environmental Health Department receiving several noise complaints concerning the aforementioned premises (**23/00321/COMNOI & 23/00492/COMNOI**), accordingly, I had considered it necessary to assess the complaints received, so as to determine whether the use of the outdoor parts/first floor potentially undermine the prevention of public nuisance objective.

To date, I've undertaken several subjective assessments in respect of the noise from the outdoor garden parts, these occurred on 17th & 31st March 2023, during the latter observation, I had intended to make use of sound level monitoring equipment to review the general ambient noise levels whilst located within close proximity to neighbouring residential receptors at Crown Court, Sun Hill, Cowes, PO31 7HZ.

However, the monitoring was unsuccessful given a party was in flow at a neighbouring residential dwelling at the time. The people noise/recorded music would have undermined the reading at this time. In response, I had arranged a follow up assessment on 14th April 2023, however, the weather conditions were considered as likely to impede any assessment. Consequently, whilst I appreciate the use of the garden may have been at limited capacity given the time of year and variable weather conditions during my subjective assessment's and I plan to make use of sound level monitoring shortly, I consider it appropriate to condition the use of the external licensable areas as a result of this application.

In determining it appropriate to offer conditions, I've undertaken a premises risk assessment with reference to the application, this is in line with the 'Good Practice Guide on the Control of Noise from Places of Entertainment' - Institute of Acoustics & Institute of Licensing (December 2016) You'll note that as a result of applying the conditions outlined below, the risk, in this case of noise disturbance, is reduced. However, the conditions, have been considered necessary as a result of sensitive residential receptors being susceptible to sharp variations in patron noise as the evening progresses.

Accordingly, as a means of ensuring the promotion of key licensing objectives, most notably, the prevention of public nuisance I've suggested the following conditions are added;

Proposed Conditions;

1. ***The use of the external area referred to as the 'garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***

Sunday-Thursday –09:00 until 21:00hrs

Fri/Saturday –09:00 until 22:00hrs

2. ***The use of the external area referred to as the 'upper garden area' hereby permitted and marked 'XX' on the accompanying plan, shall be open to customers between the following times only:***

09:00 until 21:00hrs Daily

- 3. The service of food and drink intended for consumption on the outside parts of the premises, is to occur where patrons are seated at tables.**

- 4. Signs shall be prominently displayed in the outside areas reminding patrons there are residents living nearby and instructing them to respect the neighbours and to conduct their behaviour accordingly.**

I've discussed the proposed conditions with the applicant and whilst Mr Anselm has suggested agreeing to Conditions 2 to 4, the applicant is concerned by the potential for Condition 1 to impede trade, accordingly, I offered to vary the times above from my initial suggestion of; **Sunday – Thursday 09:00 until 20:00hrs & Friday/Saturday 09:00 until 21:00hrs**. However, any further variation from the amended Condition 1 in my opinion disrupts a balance between promoting business activity and protecting local residents from noise disturbance. Please note that I've copied the applicant into my discussions as a means of confirming our call, whilst Mr Anselm is welcome to comment on any inaccuracies in my formal response to the licensing authority.

Accordingly, whilst its unfortunate that I've been not been able to agree upon the proposed conditions in their entirety and thus, I'm prepared to attend any subsequent committee to advocate these, I consider this necessary to achieve an appropriate balance between what is considered the reasonable use of the high street i.e. a degree of customer noise emanating from hospitality venues and ensuring neighbouring residential receptors are provided a degree of protection in respect of noise control.

Kind Regards


Dan

Daniel Power | Regulatory Officer | Regulatory & Community Safety Services
Isle of Wight Council | County Hall | High Street | Newport | Isle of Wight | PO30 1UD
Email: [REDACTED] Web: www.iow.gov.uk
Telephone: 01983 823000 Internal: [REDACTED]

Please note that I am away from the office on Tuesdays attending training.

Venue Risk Assessment

Captain Pizza (The Garden) High Street, Cowes, PO31 7RR
Application for a Premises Licence Full Variation – 23/00321/LAPVA

Criteria	Risk Rating	Premises Rating	Comments
Number of events per year			
<ul style="list-style-type: none"> < 1 event per week < 30 events per year Weekly, or more frequently 	0 3 6	0	Limited use of Temporary Event Notices, licensable trading hours are as follows; Mon – Sat 09:00-23:00hrs, Sun 09:00-22:30hrs.
Time of event			
<ul style="list-style-type: none"> Up to 20:00 hrs Up to 23:00 hrs After 23:00 hrs 	0 3 6	3	The risk is considered medium given the hours of use in respect of the outdoor parts have been conditioned. See proposed condition 1 & 2.
Noise sensitive receptors			
<ul style="list-style-type: none"> None in close proximity One, or more, in close proximity (up to 50 metres) Structurally adjoining 	0 3 6	3	The rear garden parts are overlooked by noise sensitive receptors at High Street and Crown Court, Sun Hill, PO31 7HZ.
Venue sound insulation performance			
<ul style="list-style-type: none"> Purpose built - robust sound insulation performance Average – not purpose built but structurally sound Poor – weak sound insulation performance 	0 3 6	6	Outdoor setting provides limited attenuation. Neighbouring residential receptors are susceptible to noise disturbance associated with sharp variations in patron noise as the evening progresses.
Confidence in management			
<ul style="list-style-type: none"> High – well-prepared NMP, no or very few noise complaints Moderate - informal controls in place, few complaints Low - no controls, poor compliance history, history of complaints 	0 3 6	3	The department have received several complaints in respect of noise disturbance associated with the use of the garden/ first floor parts. (See 23/00321/COMNOI & 23/00492/COMNOI).
Total			
Risk rating			
	<10 10-20 20+	15	Medium risk associated with the application; risk lowered by way of the proposed conditions 1 & 4 collectively. Any amendments here are likely to vary the risk matrix score.

Source - Venue Risk Assessment - 'Good Practice Guide on the Control of Noise from Places of Entertainment' - Institute of Acoustics & Institute of Licensing, December 2016