

Batchelor, Shane

From: Power, Daniel
Sent: 27 July 2023 15:41
To: Batchelor, Shane
Subject: Environmental Health - 23/00974/LAPNEW

Importance: High

Afternoon Shane,

23/00974/LAPNEW

New Premises Licence Application - The Lazy Wave, 2A Esplanade, Shanklin, PO37 6BN

Further to Duncan MacDonald's response on behalf of the Environmental Health Department, dated 28th June 2023, with reference to the above application, I have been asked to comment with reference to Dr Dawson's enquiry. I've been asked to respond given Mr MacDonald is currently on leave, whilst I appreciate a timely response is necessary given the consultation period has now ended.

I understand the aforementioned enquiry included discussion with reference to the considerations the department may have had whilst assessing the application. Whilst I appreciate Mr MacDonald is best placed to advise here, it's worth noting the criteria generally assessed with reference to a premises licence application is pretty consistent whilst reviewing an application's capacity to uphold key licensing objectives, most notably in this instance the prevention of public nuisance. Nevertheless, at the same time the Revised Guidance issued under s182 of The Licensing Act 2003, advises that each application must be considered on its own merits. With this in mind regard is typically had for matters including but not limited to;

- A premises noise complaint history where applicable
- The proposed hours of licensable activity
- The extent of licensable activities
- The proximity to commercial/residential receptors
- The venues sound insulation performance and/or the use of any external areas
- Confidence in management

Whilst regard for the above is commonplace, there is no requirement to document the specifics of an assessment in the event of a responsible authority having no adverse comments and/or seeking to submit a representation. This may be expected were a representation submitted either in favour or against an application. On reviewing the criteria regardless, I've the following comments which are provided merely to assist with the enquiry as opposed to adding upon Mr MacDonald's comments;

- A premises noise complaint history where applicable – *The premises has a history of trading prior to the application, on review of the department's case management system, I am unaware of any formal nuisance complaints having been received. This is inclusive of complaints citing disturbance regarding noise, odour, artificial light and/or accumulations. I note the application may provide the premises with the capacity to undertake licensable activity until 21:00hrs, nevertheless, I am unaware of any existing restrictions limiting the premises hours of trade with reference to non-licensable activities.*
- The proposed hours of licensable activity – *The intended hours of licensable activity occur within the hours of deregulation as provided by way of The Live Music Act 2012, accordingly as specified via Part 16.5 of the Revised Guidance issued under s182 of The Licensing Act 2003, See here; <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003/revised-guidance-issued-under-section-182-of-the-licensing-act-2003-december-2022-accessible#regulated-entertainment-1> the provision of live and recorded music between the hours of 08:00 and 23:00hrs are not considered licensable. With this in mind any proposed conditions with reference to noise control would be considered unenforceable during the hours the premises intends to provide licensable activity.*

However, it is worth noting that in the event of the premises failing to have regard for the public nuisance objective, responsible authorities and interested parties have the capacity to seek a review of the premises at later date which may culminate in the disapplication of the existing deregulation, which if necessary would have the effect of ensuring live/recorded music is licensable regardless of its hour.

- The extent of licensable activities – ***Further to the above, the licensable activity proposed is limited to the sale of alcohol, accordingly, the Police as the primary responsible authority for the Prevention of Crime and Disorder Objective have agreed conditions with the applicant.***
- The proximity to commercial/residential receptors – ***Whilst there are noise receptors within close proximity of the proposed licensed premises, the hours of proposed activity are considered reasonable and thus, mitigate the potential disturbance associated with patron noise as the evening progresses. Accordingly, the application appears to satisfy Part 10.10 of the local authority's Statement of Licensing Policy (2019-2024) given the applicant does not intend on trading during what are considered more sensitive hours, typically between 23:00 and 08:00hrs.***
- The venues sound insulation performance and/or the use of any external areas – ***The application includes the use of the outside parts, therefore, it is reasonable to expect a degree of patron noise during the early evening, however, the hours of trade must be considered again here. The department frequently consider the term 'Convention' and what is referred to as the 'general use of an area' in this instance, therefore, a degree of patron noise within a mixed commercial/residential area is considered in keeping with the character of the locality, particularly during the hours applied. In addition, the application does not make reference to any specific music offering that may constitute a material change from its current offering.***
- Confidence in management – ***I've referred to the limited noise complaint history above, accordingly, based on the premises trading to date, I'd have no pressing concerns here.***

Therefore, there are no pressing concerns in respect of the premises potentially undermining the Prevention of Public Nuisance Objective. However, as pointed out via Part 2.18 of the Revised Guidance issued under s182 of The Licensing Act 2003, it is worth noting that there are more suitable provisions in other legislation, namely by way of the Statutory Nuisance regime via the Environmental Protection Act 1990, which adequately protect those living in the area of the premises in the event of a complaint of disturbance. With this in mind, were noise disturbance alleged, neighbouring residents have the capacity to request that the department investigate here.

I hope this is of some assistance, nevertheless, I'd be prepared to discuss my response with Dr Dawson via telephone if required.

Kind regards

Dan

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