

Unconfirmed



Minutes of a Meeting of the **Licensing Sub-Committee** held in the Deben Conference Room, East Suffolk House, on **Thursday, 24 August 2023 at 10:00 AM**

Members of the Sub-Committee present:

Councillor Jan Candy, Councillor Deborah Dean, Councillor Colin Hedgley, Councillor Lee Reeves

Officers present: Teresa Bailey (Senior Licensing Officer), Martin Clarke (Licensing Manager and Housing Lead Lawyer), Matt Makin (Democratic Services Manager - Regulatory), Agnes Ogundrian (Conservative Political Group Support Officer), Alli Stone (Democratic Services Officer)

Others present: The applicant; Two Representatives, The premises licence holder

1 Election of a Chair

On the proposal of Councillor Reeves, seconded by Councillor Dean it was

RESOLVED

That Councillor Hedgley be elected as Chair of the Sub-Committee.

2 Apologies for Absence

There were no apologies for absence.

3 Declarations of Interest

There were no Declarations of Interest.

4 Declarations of Lobbying and Responses to Lobbying

There were no Declarations of Lobbying.

5 Review - Premises Licence

The Sub-Committee received report **ES/1628** of the Licensing Officer which related to an application for the review of the premises licence for Alba Chiara, 91-93 Undercliff Road West, Felixstowe IP11 2AF, under the licensing objective 'prevention of public nuisance'.

The Licensing Officer stated that during the consultation period for the premises review, ten comments in support of the review were received, and one comment in support of the premises was received. The Environmental Protection Team, who were a Responsible Authority under the Licensing Act 2003, had not submitted a formal representation to the application, but had submitted comments for consideration.

The Licensing Officer stated that some representations made references to changes in the times for the licence. Wording restricting the playing of live or recorded music had incorrectly been added to the premises licence. This was not necessary as these activities had been deregulated, and the Licensing Officer confirmed that a corrected premises licence had been issued in May 2023 with no restrictions regarding playing live or recorded music.

The Licensing Officer asked that the Sub-Committee determine the application by either:

- modifying the conditions of the licence
- excluding a licensable activity from the scope of the licence
- removing the Designated Premises Supervisor
- suspending the licence for a period not exceeding three months
- revoking the licence

In response to a question from the applicant, the Licensing Officer confirmed that many other premises in the area had received their licences prior to deregulation which is why times were stated for when music could be played. The Licensing Officer confirmed that since deregulation premises were allowed to play live or amplified music until 23:00 without this being stated in their licence. The Licensing Officer confirmed that the Sub-Committee had the option to modify the premises licence and exclude or limit this activity.

The Chair invited the applicant to make their representation.

The applicant stated that they accepted there would be ambient noise in their property due to its location. What they had not expected was the constant outside music from the terrace and the second hand smoke associated with it. The applicant asked for a ban on music in outside areas, and a condition be added to the Premises Licence make the terrace non-smoking. The premises licence holder had installed outdoor speakers in 2021, since the installation of speakers the applicants enjoyment of their home had been disrupted but a constant and annoying sound which significantly interfered with their home life and sleep. The applicant stated they did not consider this background music, the sound level was very subjective and changed depending on weather. The music was also adjusted and open to abuse by staff, and was constantly played for twelve hours a day beyond the opening hours of the premises.

Regarding smoking in outside areas, the applicant stated that smoke often permeated into their home. they had attempted to engage with the premises licence holder on the

issue, but had not been successful. The applicant stated that staff also smoked on the terrace outside of opening hours causing further issues.

The applicant confirmed that the situation had worsened since the premises licence holder had been told they could play music until 23:00. Previously they had agreed that music would stop at 21:30 and that residents could contact the premises if music was too loud.

Councillor Hedgley referred to pictures which showed people smoking on the terrace and asked whether the umbrellas on the terrace were of any use. The applicant stated they had a limited impact as people often smoked directly next to the building rather than under the umbrellas.

The Chair invited representation from Mr PM who supported the application.

Mr PM stated that he believed there was a strong case to look after the residents of the flats above the premises. This was a commercial business who wished to make a success of their business, and so pushed the boundaries of their licence. The flat owners had the right to the quiet enjoyment of their homes and Mr PM stated that the Sub-Committee should limit the commercial interests of the business to protect the private enjoyment of the properties above the premises. Mr PM stated that it seemed logical to limit the licence, as this would still allow the restaurant to be successful and protect the private enjoyment of the residents above.

The Chair invited the premises licence holder, Mr M to make their representation. Mr M stated the intent of the business was not to offend or harm people. He recognised that these neighbours had purchased flats under different circumstances where there had been a café rather than a restaurant on the ground floor. Mr M stated that the noise from the speakers was rated to be less than that of a typical high street during the day, and that a noise assessment needed to be conducted so they could move forward based on proof. Regarding smoking, it was typical for the outside premises to have smoking and due to the nature of the weather on the front at Felixstowe it was very difficult to control where the smoke went. Mr M stated that the business operated at a loss over winter as they did not use the full premises, and by limiting the activity of the restaurant in the summer it could prevent the success of the business.

Councillor Reeves asked Mr M if he accepted the complaints from neighbours about the speakers being left on overnight. Mr M stated that this had been an isolated incident when an alarm had sounded through the speakers, as soon as he had been made aware of this he had arranged for it to be turned off.

Councillor Hedgley asked if Mr M was aware of noise outside of the licencing times, perhaps from cleaners or staff playing music outside of opening hours. Mr M stated very little music was played before opening hours. The licenced hours were from 10:00 to 23:00, and staff started playing music at 11:00 when they arrived. Mr M stated they had always tried to reduce disturbance to neighbours, for example control of rubbish areas and pests, no using appliances late at night. Mr M also stated there were various other activities on the street and they could not help issues coming from these premises which also caused a nuisance. Mr M stated if he could do something about the nuisance from his premises he would.

Councillor Reeves asked Mr M if music was stopped at an earlier time, would this impact his business. Mr M stated he had always turned off music if there were no customers outside. Music provided the ambiance and was not a main attraction. On the inside they had installed sound proofing as this had been an issue. Mr M stated he had informed neighbours that the licence had been extended but he had turned off the music when asked. He stated the applicant had visited the premises to ask for music to be turned off, and he had agreed to turn off the music when customers had left. He had also agreed to turn off the music at 22:00. Mr M stated that there were various things on the premises that caused noise, including air conditioning, extractor fans, appliances and which contributed to noise, but this was part of running a restaurant.

The Licensing Officer referred to a visit from the Environmental Protection Team when they stated there had been no evidence of a noise nuisance, but that it might be wise to turn off music at an earlier time. Mr M stated he had not been directly contacted by Environmental Protection.

The Licensing Officer asked if there was any other area that could be used for smoking. Mr M confirmed the terrace was the only outside space accessible by customers.

The applicant asked how an alarm had played all night through the speakers. Mr M stated the alarm was connected to the computer which played music and staff had forgotten to turn this off. The applicant stated there had been a personal agreement to turn music off at 22:00, but music had continued to be played past this point. Mr M asked if there was evidence of this. The applicant stated that music had played beyond 10pm on two nights that week. Mr M refuted this.

The applicant referred to their visit to the restaurant when Mr M stated that she had been abusive to staff. Had this been recorded? Mr M stated that there had been another complaint the following date when the applicant had threatened to call the police, but he had not considered this important enough to keep a record of as he had not been accused of anything that was outside of the licence activities.

Mr PM asked if the applicant aware of any other restaurants that played music outside, and whether this was an exceptional activity. The premises licence holder confirmed he was aware of other restaurants that did this. The Legal Advisor stated that questions should be limited to this licence only, if there were issues with other premises then this could be addressed separately.

The applicant stated when residents had met with the restaurant there had been a suggestion of a smoking table on the left of the terrace rather than the whole terrace, which the premises owner had agreed to. The applicant asked why had this not been kept to and whether this could be reintroduced. Mr M stated that this would reduce the capacity of smokers, and that taking away an ashtray from all the outside tables would not mean that people did not smoke.

The Chair invited all parties to sum up.

The Licensing Officer clarified that music did not have to be background music but there was a requirement to not cause a nuisance. The Licensing Officer confirmed

there had not been a new permission granted to play music to 23:00, permission had always been to play outdoor music, there had just been an error in the licence which had been corrected.

The applicant stated that their flat was their only permanent home, but they had now had to stay with friends for the whole of August due to the noise nuisance. Their sleep had been disrupted and the applicant stated that her husband had referred himself for mental health support due to this nuisance. Many of the terraces were visited by families who did not wish to sit in the way of smoke, and the applicant did not think the request for a non-smoking terrace was unreasonable. They accepted the ambient noise associated with living on the seafront, but this year there had been a number of issues with Alba Chiara and the licensee had been unreasonable and inconsiderate even when asked to take actions by the Council or building management. The applicant stated that many premises had conditions to limit noise levels inside and outside.

Mr PM agreed that what the applicant asked for was reasonable. He hoped the restaurant could continue to be successful but that with more respect to the nearby residents. Mr PM stated he was not aware of other restaurants that played music outside, beyond events. He hoped that business could still be successful as it had a good reputation from a number of years in business.

Mr S who supported the applicant stated that he appreciated the commercial needs of the business but there needed to be a balance between the commercial and residential. There was no desire to stop commercial activities wholly. Mr S recognised that the speakers were not meant to be any louder than background levels on a high street, but people had to live directly above this.

Mr C who supported the applicant stated that at one point all neighbours had good relationship with the premises licence holder. When the properties had been purchased, there had only been a small café. Now Alba Chiara had developed into a larger business and residents had assisted Mr M with this by deterring intruders and pointing out issues when the business was closed. Mr C commented that smoking was a big issue for customers, but having people smoking directly under bedroom windows was not good for the health of neighbours. Mr C stated that Mr M was not as open as he had been, and had pushed activities right up until the closing time in the licence and in some cases beyond. Mr C asked that residents be protected and the business could still be successful.

The premises licence holder stated that he understood the issues raised by residents but he was there to run a business. When the application for review had been made they had posted a reply on the windows but this had been torn down. Mr M stated the many of the accusations in the application were false. The restaurant had opened in 2020 but had been impacted by the lockdown. The business had been well supported by the residents of Felixstowe, and Mr M considered the business a way of life not just a job. There had been no complaints regarding crime or disorder. Since the licence had been aligned with national laws, there had been options to host live music but this had not been taken. Mr M felt that they had been accommodating of the neighbours in turning off appliances, music and not using service areas at late times. The review application had included statements which were not true, and included photos which

had been taken of staff and guests without their permission. Mr M stated that he had always adhered by the law and tried to accommodate the wishes of neighbours.

The Sub-Committee adjourned with the Legal Advisor and Democratic Services Officer to consider their decision. On their return the Chair read out the following:

DECISION NOTICE

Ms Sonia Jackson has applied for a review of the premises licence for Alba Chiara, 91-93 Undercliff Road West, Felixstowe IP11 2AF. The review has been called under the licensing objective 'prevention of public nuisance' to consider a ban on smoking on the terrace and the playing of music outdoors.

The Sub-Committee heard from the Senior Licensing Officer who summarised the report. The review had been called as an application had been received by an 'other person'. During the consultation period ten representations had been received in support of the review, and one in support of the licence holder. Comments had also been received from the Council's Environmental Protection Team. The Licensing Officer confirmed that there had been an error in the Licence that had been originally issued, which had stated that music had to stop at 9pm. This had been amended in May 2023 as there was no requirement to adhere to a cut off time beyond the cut off time for all licensable activities.

The Sub-Committee heard from the applicant who stated that they accepted there would be ambient noise due to the location. Since the installation of speakers on the terrace there had been significant impact to their private enjoyment of their home and had impacted their mental health, and this went beyond reasonable background noise levels. The sound levels were also changed by staff, and music went on beyond the opening and closing times. The applicant asked that the licence be amended to ban outdoor music and a condition be added to make the terrace non-smoking.

Mr PM, who had made a representation in support of the review, stated that close neighbours had a right to private enjoyment of their homes. Limiting the licence would not impact the success of the business but would protect the enjoyment of residents.

The Premises Licence Holder stated that the intent of the business was not to offend or harm people. He recognised that the residents had purchased flats under different circumstances. The speakers he had installed were rated to produce noise at a similar level to a typical high street. Regarding smoking, it was typical for businesses to have smoking at outside tables and this was difficult to manage due to the changing weather.

The Sub-Committee also heard from other residents who stated that there was a need to balance between business and residential interests, but did not believe that limiting hours music was played would not significantly impact a successful restaurant.

The decision of the Sub-Committee

The Sub-Committee, having considered the application, representations from other interested parties and the premises licence holder, have decided to add a condition that in the outside licensable area, live or recorded music may only be played between

the hours of 12:00 and 22:00 and shall only be permitted when licensable activities are taking place on the premises, section 177a of the Licensing Act 2003 does not apply to this condition.

Reasons for decision

In arriving at this decision, the Sub-Committee has taken into consideration the representations of all parties present and all written representations received including the responsible body, Environmental Protection.

The Sub-Committee notes that prior to May 2023 when the Licence Holder was notified that he could have outdoor music until 23:00 there were no complaints made to the Licensing Team. Whilst the Sub-Committee appreciates the concerns of the residents, they note that Environmental Protection having observed the noise, consider it as background music only and not a public nuisance as per the licensing regime. Although it is for the Sub-Committee to decide whether or not the music is a public nuisance, the Sub-Committee takes into account paragraph 9.12 of the statutory guidance which states that each responsible authority is an expert in their relevant field and therefore must consider all representations from responsible bodies carefully. The Sub-Committee therefore places great weight on the fact that Environmental Protection did not consider this a public nuisance. However, the Sub-Committee does note the concerns of the residents and considers that 22:00 cut off for outdoor music will balance the interests of all parties.

In respect of smoking in outside areas, the Sub-Committee can only control this in the licensable area and considers that if smoking was banned in the licensable area it would only move activity a very short distance away to the pavement. In relation to staff smoking outside of the licensable area, this is not a licensable activity and therefore the Sub-Committee is unable to action. The Sub-Committee hopes that the premises licence holder would take into account concerns from neighbours in this matter.

This decision does not preclude any further action from being take by the Environmental Protection Team should any evidence of a public nuisance come to light.

In making its decision the Sub-Committee considered the Council's own licensing guidance and statement of licensing policy, as well as the Statutory Section 182 guidance, and Human Rights Act 1998.

Anyone affected by this decision has the right to appeal to the Magistrates' Court within 21 days of receiving notice of the decision.

Date: 24 August 2023

The meeting concluded at 12.25pm

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Chair