

Minutes of	Licensing Act 2003 Sub-Committee
Meeting date	Wednesday, 24 November 2021
Committee Members present:	Councillor Matthew Lynch (Chair), Councillor (Vice-Chair) and Councillors Terry Howarth and Jean Sherwood
Officers:	Tracy Brzozowski (Customer Services (Enforcement)), Nathan Howson (Enforcement Team Leader (Licensing)), Lesley Miller (Environmental Health Officer), Tasneem (Shared Legal Services Team Leader) and Coral Astbury (Democratic and Member Services Officer)
Apologies:	None

21.1 Declarations of Any Interests

There were no declarations.

21.2 Procedure

The Chair outlined the procedure to be followed at the meeting.

21.3 Review of Premises Licence Cosmopolitan 30 St Georges Street, Chorley

The Director of Planning and Development submitted a report for the Licensing Act 2003 Sub-Committee to advise members of an application for review of a premises licence in respect of Cosmopolitan, 30 St George's Street, Chorley, PR7 2AA.

The Premises Licence Holder (PLH) Mrs. Vanda Rome-Tankut was present, as was her representative Mr. Mark Smith.

The Applicant for Review on behalf of the Environmental Health Department at Chorley Council, Mrs. Lesley Miller was present. Also present was Mr. Nathan Howson (Enforcement Team Leader – Licensing), who had submitted a representation on behalf of the Licensing Authority. Two other persons; Mr. Carl Sutton (witness on behalf of EH) and Ms Denise Richmond were also present at the Sub-Committee.

The Sub-Committee were asked to approve the requests received under regulation 8, allowing eligible parties to the hearing to speak. In response, the Council's legal advisor explained that only residents who had put in a representation would be permitted to speak under regulation 8. As Mr Jonathan Evans had not submitted a formal representation he would not be permitted to speak at the hearing.

The Customer Services Manager (Enforcement) presented the report and explained that the premises had been licensed since 2011 and was located on St George's Street. The premises is situated in a traditional two-story end terrace and comprises of an extended outside area used for eating and drinking. Next door to the premises is a new build building which houses an office on the ground floor together with a number of residential apartments on the ground and first floor. Mrs. Lesley Miller for and on the behalf of the Environmental Health Department of Chorley Council, explained that an application for review was submitted on the grounds that the licensing objective of the Prevention of Public Nuisance is being undermined.

The Customer Services Manager (Enforcement) requested Members give due consideration to the application and any relevant representations. Members noted that the duty of the licensing authority is to take steps appropriate to promote the licensing objectives in the interests of the wider community.

It was confirmed by the Customer Services Manager (Enforcement) that the application for review had been advertised in accordance with the regulations and during the consultation period three representations had been received. The Applicant for Review, Mrs. Lesley Miller explained to the Sub-Committee that the Environmental Health Department received several complaints from residents about noise, in particular the outside area from Spring 2021. Officers from both Environmental Health and Licensing had made several visits to the property and engaged significantly with the Designated Premises Supervisor (DPS). Officers had provided a great deal of advice and support around the visits to try and resolve the noise issues.

Mrs. Miller acknowledged that the premises had faced some challenges because of Covid, however there was a need to balance the needs of the business against those of the resident and the enjoyment of their properties. Complaints had continued to be received over summer with residents reporting issues of sleep disturbance from music and people shouting until 2am Thursday through to Sunday night. A number of residents had advised that they were unable to have windows open during the summer months due to intolerable levels of noise, so a noise nuisance investigation was started. As a result, a noise abatement notice was served on 24 September 2021 following repeated complaints. Mrs. Miller explained that it was her view that Officers had made attempts to negotiate and to advise and support the business and even given practical help, but there was now sufficient evidence to demonstrate the need for serving a noise abatement notice alongside the application for review.

It was confirmed by Mrs. Miller that when the notice was served, Officers met with the PLH, DPS and Mr. Smith and it was felt that the PLH and Mr. Smith fully understood the consequences of non-compliance with the notice.

Members sought clarification on how much assistance had been given to the PLH. In response, Mrs. Miller explained that Officers tried to provide some advice and support in reducing the bass level and noise outside. As lockdown eased, the premises were only permitted to open outdoors and it was accepted that this could be difficult for premises to manage. Mrs. Miller had worked with the DPS and used their system where they can manage the amount of bass that comes out of the speakers and she had reduced it down. In her view, the nature of the premises and their clientele had changed. Previously the premises was more of a food-orientated business and cocktail bar, however this seems to have changed into more of a loud music venue which would explain the number of complaints received.

The Enforcement Team Leader (Licensing), Mr. Nathan Howson, confirmed that complaints had previously been received for the venue, but did not form part of the evidence for this hearing. A complaint was received following the first COVID lockdown and an improvement notice was served. Prior to this, there was a single incident of noise nuisance in 2019 but no formal action was taken.

Mr. Howson explained that he had made a representation on behalf of the Licensing Authority as he was satisfied that the licensing objective; namely the prevention of public nuisance, was being undermined. Several visits had been undertaken at the premises following noise complaints and generally these visits had been well received. There was a short period of improvement and then complaints would continue to be received. Officers on duty in the town centre on 10 September 2021 approached the premises from the bottom of Market Street up to the junction with St George's Street at approximately 23:45 and from a distance of 135 metres could clearly and easily hear the main beats of the music. As Officers got closer to the venue, the music became louder and was described as, "a club outside of the premises." Mr. Howson explained that he observed the premises for about five minutes and heard no improvement in the noise levels and it was his view that there was clearly no control or any attempt to abate the noise and quieten it down.

Mr. Howson provided to the Sub-Committee that he had proposed alternative conditions. In response to a member enquiry, it was confirmed that these had not been directly discussed with the PLH, although they were provided a copy in the agenda pack for the meeting.

Mrs. Miller asked Mr. Howson his opinion on the volume of the noise, in response Mr. Howson confirmed that where there is an elevated level of music and noise you experience an elevated volume of noise from the patrons themselves, as they have to shout to be heard.

Mr. Smith, on behalf of the PLH, asked if the conditions within the new Statement of Licensing Policy would be applied to all premises in the borough. In response, Mr. Howson explained that the Licensing Act 2003 prohibits the use of blanket conditions, and that many of the conditions within the policy would not be appropriate in all venues. The inclusion of the pool of model conditions within the policy was to aid members and officers in deciding appropriate conditions.

Ms Denise Richmond outlined her representation to the Sub-Committee and explained that she lives in the apartments at St George's House. Ms Richmond provided that she moved into her apartment in May and was aware of the premises next door but did not think it would be an issue as she thought it would be more of a restaurant/cocktail bar. Ms Richmond explained that on Thursday evenings, the music is loud till approximately midnight and on Friday-Saturdays, 2 am.

Ms Richmond stated that she had put up with the noise for a few weeks then went to the premises to speak to the owner. When she attended the premises, there were only bar staff present. Ms Richmond explained that the bass was an issue and the staff replied stating they could not do anything. They showed her a copy of the licence and reiterated that they could open until 2am any day of the week, playing music either indoors or outdoors.

Ms Richmond explained that after this instance, the noise got progressively worse, it wasn't just bass, but she could also hear the music. Ms Richmond attended the

premises a second time and spoke to the son in law of the PLH, who apologised for the noise and said he would turn the volume down as well as offering discounted food. The music was turned down but after an hour was turned back up. Ms. Richmond told the Sub-Committee that she had tried various things to block out the noise, such as wearing ear defenders to sleep but it did not work. On the third instance that Ms. Richmond attended the premises to complain about the noise she explained that the staff did not seem interested and she was now concerned as the outside area looked to have been extended with new heaters being fitted.

Ms. Richmond explained that once the abatement notice had been served the premises went quiet for around three weeks, but it had now started again. On two occasions since the serving of the abatement notice the premises had been playing loud music. Ms Richmond advised the Sub-Committee that she had a recording of the noise on 14 November 2021 after the abatement notice had been served and offered to play this to members. The Council's Legal Advisor explained that the recording could not be played as it was not formally submitted and neither the PLH nor members had prior access to the recording.

Ms. Richmond explained that she had to sleep out on a couple of Saturdays as she could not cope with the noise as it did not end at 2am when the premises closed as patrons were loud and disruptive when leaving.

Mr. Carl Sutton explained that his flat is two buildings away from the premises and the noise had been too loud from December 2019. Mr. Sutton explained that he visited the premises after music was being played loudly until 00:45 and spoke to whom he believed was the owner, and they were very apologetic. The owner explained that he would close the windows and turned the bass down and was very amicable. Two days later the music was on again until 2 am and Mr. Sutton visited the premises to make a further complaint. Mr. Sutton explained that the owner blamed the noise on a leavers party and stated that he could not control patrons leaving. The owner became aggressive and started swearing, stating that Mr. Sutton was trying to have his business closed down. Mr. Sutton told the Sub-Committee that the owner showed him the licence again and stated that he was not doing anything wrong.

Mr. Sutton explained that once the abatement notice had been served, he did not hear any noise and could enjoy his property fully, however for the last three weekends the premises has reverted back to playing loud music and bass.

Mr. Smith on behalf of the PLH explained to the Sub Committee that due to a technical issue with the PLH's email account they had only received the paperwork for the meeting on Monday 22 November. It had been sent by Officers to the PLH on the 10 November. Mr. Smith explained that had they received the paperwork on the original email, the PLH would have sought legal representation.

Mr. Smith stated that the PLH fully accepts that the premises were causing a nuisance and agreed that the Council was correct to act following repeated attempts at trying to resolve the issue with the premises. Mr. Smith explained that part of the problem for the premises was the DPS. For the incident on 14 November 2021 the PLH has a record that shows the DPS working, and the doormen went upstairs and turned the music down after five or ten minutes.

After the PLH and Mr. Smith met with the Council on issue of the abatement notice they realized how serious it was and implemented changes at the premises. Mr. Smith explained that they discussed and began procurement for a noise control system

which would be installed on 25 November 2021. The PLH put a piece of tape over the volume control on the speaker for when she was not present, a new manager was hired and given extensive training on noise and patron control. The doormen were also briefed on how to encourage patrons to leave quietly and would now be monitoring the situation more closely and reporting any issues to the PLH. The PLH now attends the premises daily and the gazebos would be fitted with new coverings to attenuate noise.

Mr. Smith expressed concern at some of the draft conditions proposed by Mr. Howson. In particular, the last condition relating to alcohol being taken outside after 23:00. Mr. Smith explained that this condition would close the business as the outdoor area was quite a big part of the restaurant. Since the new measures, the PLH has seen another change in clientele and was experiencing more restaurant visitors as opposed to bar visitors.

Members asked the PLH if there was any reason that she struggled to control the noise from the premises. Mr. Smith replied that it was obvious that it was loud, but it was the DPS who was in charge of the restaurant. As the DPS was the PLH husband this was causing a lot of friction as the PLH had made it clear that his behaviour was not acceptable. Mr. Smith provided that the PLH had stopped the DPS controlling the bar and the music and now had him greeting guests, an incident of noise nuisance occurred on the one night he was not greeting patrons.

Members sought clarification on the role of the DPS and it was explained by Mr. Smith that the DPS had previously been running the cocktail bar and managing the music but was now meeting and greeting patrons. The PLH and Mr. Smith had discussed whether a change in DPS might be appropriate.

Members asked how the impact of no alcohol outside after 11pm would close the business. Mr. Smith provided that it was the PLH who had indicated this based off the sales on the till. Since the abatement notice was served and noise turned down the alcohol sales had dropped. The clientele had changed as previously patrons would eat and go; however, a lot more stay on at the premises and have a drink in the courtyard. Mr. Smith also clarified that there had always been heaters in the courtyard, they had just recently been updated to more efficient infrared heaters.

In response to a member enquiry, Mr. Smith confirmed that they could cease some of the loud music during the week as it would have only a minor effect, however restricting alcohol from the outside area after 23:00 would not work for the business as people are outside until 02:00.

The Sub-Committee agreed to adjourn the meeting for a small period to allow the PLH and her representative time to examine and consider the draft conditions proposed by Mr. Howson.

After consideration of the proposed conditions by Mr. Howson, Mr. Smith made the following comments:

1. Condition One – this would be reasonable, although still a restriction on the current licence.
2. Condition Two - In the outside areas currently the speaker system is switched off at 23:00. With the new system, Mr. Smith and the PLH still felt this would be

reasonable.

3. Condition Three – Hourly patrols can be conducted by the door supervisor and manager who will be at the premises, Mr. Smith provided that they were happy with this condition.
4. Condition Four – this is a difficult condition for the business and Mr. Smith requested that alcohol would be permitted outside until 01:00 with noise controls put in place. It was accepted by the PLH that the noise nuisance for residents was wrong and they would like to improve this. The PLH would not allow any admissions into the venue after 00:00 which would reduce the amount of people entering the premises inebriated.
5. Condition Five – signage is already displayed, and the door supervisor has been briefed to ensure that patrons leave quietly. The door supervisor would not permit entry to patrons who are already too intoxicated.

Mr. Smith stated that the PLH would like to provide residents with direct contact with herself so that she could address any further concerns. In addition, there was no concerns from the PLH, or Mr. Smith should the Sub-Committee choose to remove the DPS.

Mrs. Miller, in summarising acknowledged that the PLH agreed that Officers tried to work very hard with the business and residents. Mrs. Miller explained that they wanted to use process in a positive way to ensure that the business could operate in a way which causes no negative impact on residents.

In summarising, Mr. Howson explained that the PLH had accepted the licensing objectives had been undermined and advised the Sub-Committee to take such steps as appropriate to try and promote the licensing objectives. Mr. Howson requested that the Sub-Committee attach appropriate conditions to the premises.

Ms. Richmond summarised her representation and stated that it was distressing for all residents near the premises. Ms. Richmond clarified that on 14 November after the notice had been served the music was loud and not turned down from approximately 22:30 until 02:00. The music is more of a nightclub than restaurant and cocktail bar, with the outside area full of young people drinking and shouter. Ms. Richmond explained that as the music gets louder the patrons get louder, upon leaving the premises the noise continues and it is difficult for the door supervisor to control the patrons. Ms. Richmond told the Sub-Committee that she could not cope with not being able to sleep or enjoy her evenings in and she should not have to go somewhere else to get away from the noise.

Mr. Sutton explained that he was happy that the steps put in place by the PLH worked as there was a four-week period where the noise was acceptable. However, the noise returned. The steps put in place would need to be continuous and adhered to all the time.

Mr Smith accepted that the control of noise was an issue and this is the reason why a new noise control system was due to be installed. He explained that the PLH was trying to do everything possible to correct the situation. Mr Smith stated that it was a balancing exercise between the rights of the business against the rights of the

residents and that as there had been noise issues, there was a requirement to sort this out.

Resolved:

After careful consideration of the written and oral representations made by all parties to the hearing and having regard to the following:

1. The guidance issued under the S182 of the Licensing Act 2003
2. The Council's Statement of Licensing Policy
3. The Licensing Act 2003

The committee found there had been an undermining of the public nuisance licensing objective. The Premises licence holder had been given ample opportunity in the last six months to deal with the noise issues at the premises.

Despite informal action and warnings of the noise issues, by Environmental Health and Licensing Officers to address concerns in respect of noise nuisance, this made no difference.

Ultimately, the continued noise nuisance led to formal action and the service of the abatement notice, which had not been appealed. During the hearing, the PLH has accepted that there have been complaints and that the local authority had attempted to assist and support them on numerous occasions. It was offered by the PLH that the problem in respect of the noise nuisance lay with the DPS and it was the DPS who was failing to manage the premises. The PLH stated that the change in clientele was as a result of the noise issues at the premises, i.e. that music was being played at such a level that it was attracting a different type of clientele.

It is clear to the committee that there is a direct link to the noise nuisance and management control of the premises via the DPS. The removal of the DPS was offered by the PLH.

The Committee accepted that the PLH had made some attempts in recent weeks to try to address the problem, by investing in some noise control equipment. Furthermore, a resident had stated that the noise was not an issue for 3-4 weeks and appeared to have been addressed, however, there was an incident on the 14/11/21, which indicated that the problem had resurfaced.

The Sub- Committee found that the noise nuisance had an impact on residents living in the area and a necessary and proportionate response to the undermining of the licensing objectives was to remove the current DPS. **The Sub- Committee therefore resolved, pursuant to Section 52(4)(c), to remove the designated premises supervisor.**

The removal of the DPS did not go far enough in the opinion of the committee and therefore, a further adequate and proportional response to the undermining of the licensing objectives was the imposition of the following conditions to redress the balance. **The Sub- Committee therefore resolved, pursuant to Section 52(4)(a), to modify the conditions of the licence by imposing the following conditions on Annex 3 of the premises licence:**

1. The windows and doors of the premises shall be kept closed, save for access and egress, on Friday's and Saturday's after 00:00, Monday-Thursday after 22:00 and Sunday after 23:00 hours when the playing of recorded music or the performance of live music is being carried out. Section 177A does not apply to

this condition.

2. No music whether live or recorded shall be played or performed in the outside areas of the premises on Sunday – Thursday after 22:00, Friday and Saturday after 22:30. Section 177A does not apply to this condition.
3. After 2300hrs and until the close of business, the premises licence holder, designated premises supervisor or other person nominated in writing, shall conduct hourly patrols in the outside areas of the premises, as defined by the plan attached to the premises licence, to assess the levels of noise generated by patron. Where noise is above background noise, remedial action shall be taken. A record shall be made in a dedicated diary which shall include, as a minimum, the person making the entry, the time and date of the entry, what the findings of the patrol were, and what remedial action, if any, was taken. This diary shall be kept on the premises at all times and shall be produced to a police constable or authorised officer on request. Completed diaries shall be kept for a minimum period of 12 months from the date of the final entry in it or for such longer period as may be directed by a police constable or an authorised person.
4. Alcohol shall not be permitted to be taken into the outside areas of the premises after 2300hrs on a Sunday, after 22:00 hrs Monday-Thursday and after 00:00hrs on Friday and Saturday.
5. The premises licence holder shall cause adequate signage to be displayed in the outside areas with wording to the effect of asking customers to leave quietly and with respect to neighbours. Furthermore, the PLH shall ensure that staff members receive adequate training ensuring compliance with the signage.

The committee recommended that the PLH should not only make sure she is aware and fully understands the requirement of the new conditions but also those already in place on the premises licence. The committee hopes that the PLH will continue to co-operate with the Responsible Authorities and will seek assistance if needed in the future.

Chair

Date