

NEWARK & SHERWOOD DISTRICT COUNCIL
LICENSING SUB-COMMITTEE

RECORD OF HEARING HELD ON
10 OCTOBER 2019
14:00 HOURS
ROOMS F2 and F3, CASTLE HOUSE

HEARING TO CONSIDER AN APPLICATION TO VARY A
PREMISES LICENCE

MCCARROLLS BARBERS, 32 KING STREET, SOUTHWELL, NG25 0EN

SUB – COMMITTEE: Councillor Mrs R. Crowe (Chairman)
Councillor L. Brazier
Councillor Ms R. White

ALSO IN ATTENDANCE: Caroline O’Hare (Senior Legal Advisor - NSDC)
Nicola Kellas (Licensing Officer - NSDC)
Alan Batty (Business Manager – Public Protection - NSDC)
Anna Meacham (Licensing Support Officer - NSDC)

Applicant: Paul McCarroll
Representors: Rachel Thackery and Guest
Councillor Penny Rainbow
Brian Beddows (EHO – NSDC)

APOLOGIES: Richard Marshall (Planning Officer – Enforcement)

Prior to the commencement of the Hearing, the Panel’s Legal Advisor advised all parties present of the key considerations for determining the application to vary the premises licence. She acknowledged the already agreed additional condition between the applicant and the Police and reminded those present that any decision must be based on the four licensing objectives, highlighting that the key one for this hearing was the Prevention of Public Nuisance. She advised that any decision must be justified and proportionate to the application and any applied condition must be reasonable.

Presentation by Licensing Officer

The Licensing Officer presented to the Panel details of the reason for the Hearing which sought Members’ consideration for a variation to a premises licence to extend the current opening hours on a Friday and Saturday. The report before the Panel presented Members with the background information in relation to the licensing history, including complaints received concerning excessive noise from both inside and outside the premises from music and customers. Representations had been received in relation to the application and were contained within the report.

The report set out the legislation in relation to the powers that licensing authorities had to vary the premises licence, the options available to the Panel and the relevant policies and guidance.

Presentation by the Applicant

Mr. McCarroll was in attendance and addressed the Panel. He stated that the reason for his application to vary the licence was in order to afford him flexibility on Friday and Saturday evenings on what time he closed his premises. He added that often the premises did not get customers in until 8pm and that the applied for extension to the current termination hour of 9.30pm act as a buffer to make the business financially viable. He added that, if granted, it was not his intention to use the extended hours every Friday and Saturday.

Questions to the Applicant

Ms Thackray sought assurances from Mr. McCarroll as to what assurances he could provide that he would not use the extended hours, if granted. She added that subsequent to the last variation granted, Mr. McCarroll had not adhered to the conditions placed on the premises licence and that this had impacted on her home life due to noise nuisance.

Mr. McCarroll advised that the Environmental Health Officer would be leaving some noise monitoring equipment at the premises so that an appropriate volume level could be set. He added that he had not been aware that the noise levels in Ms Thackray's home were as loud as they were and would be willing to accept a condition requiring that the door must remain closed. He further added that he would keep music volume levels to a minimum until the levels were set.

In relation to the noise from customers outside the premises, Mr. McCarroll stated that it was his understanding that he could not stop them from going outside to smoke a cigarette, adding that he did not allow them to take alcohol. He stated that this was monitored and stopped if a customer attempted to take their drink with them. He also stated that customers were asked to keep the level of noise down if they did go outside for a cigarette but at present there were no notices to that effect but that he would be willing to post them if required to do so.

In noting that Mr. McCarroll had agreed to a condition to keep the door closed, the Environmental Health Officer noted that there was also a door at the rear of the premises. He queried whether it was possible to limit the number of customer congregating outside the premises with appropriate signage being posted to that effect. In response to how he could limit the numbers, the Legal Advisor informed Mr. McCarroll that the immediate vicinity and customers outside his premises was his responsibility. Mr. McCarroll stated that it was his wish that customers used the rear of the premises to smoke but that Ms Thackray was against that due to potential further noise nuisance. He acknowledged that the rear of the premises would only accommodate 4-5 persons and that its use would be monitored.

Mr. McCarroll advised that generally there were only a few people outside the premises at any one time but on occasion there had been as many as 9. He added that his clientele were generally older and not rowdy.

The Licensing Officer advised that the current licence only covered Mr. McCarroll for onsales and therefore any taking of alcohol outside was a breach of his licence. She queried whether Mr. McCarroll would consider agreeing to limit the number of time he used his extended hours, if granted. Mr. McCarroll stated that he was not willing to do that at present.

A Member of the Panel queried whether, when the premise was being operated as a barbers, children were present when alcohol was served. Mr. McCarroll advised he was licensed to serve alcohol during the day but that none of his customers bought it.

The Chairman of the Panel noted that should Mr. McCarroll advertise the extension of the licensed hours his customers would be aware and possibly bring pressure to bear for him to frequently remain open. Mr. McCarroll reiterated that he was not willing to limit usage of the extended hours but that it was not his intention to frequently use them.

The Panel's Legal Advisor queried as to what Mr. McCarroll would base his decision on as to whether to remain open for longer hours or not. Mr. McCarroll advised that he would not advertise the hours and that the decision would be made on the night by himself and his wife who worked at the premises with him.

In response to whether he would consider employing staff to operate the bar, Mr. McCarroll advised that the work was only undertaken by himself and his wife.

In relation to whether the bar served regular customers or passing trade, Mr. McCarroll stated that customers were mostly regulars but that it was unpredictable as to what time they would arrive.

Presentation by Representors

Councillor Mrs Rainbow

Councillor Mrs Rainbow was in attendance and addressed the Panel. She explained that she had continued to receive complaints since the last variation had been granted in relation to noise and nuisance from the premises with the overriding complaint being of noise nuisance from loud music. Other complaints involved the congregation of customers outside the premises whilst smoking.

Councillor Rainbow acknowledged that whilst people had chosen to live in a town centre area it was of mixed use between commercial and residential and that there must be a mutual respect of each other. She noted that a noise abatement notice had been served on the premises by Environmental Health and requested that, if granted, that usage of the extension to the hours be deferred until noise abatement works had been carried out.

Rachel Thackray

Ms Thackray stated that since the premises had opened her home was no longer a quiet haven. She endured persistent noise from music with bass levels being of particular concern and that Mr. McCarroll had found this difficult to accept. The EHO had advised that the levels of noise were due to the street topography of the area and led to a reverberation of sound with weekends being particularly unpleasant.

Ms Thackray advised that the summer months had been bad and had led to her not being able to go to bed when she wanted, having a negative impact on her home life to the extent where she had considered selling her home. She noted that there were steps which could be put in place to mitigate the noise levels and had reluctantly invited Mr. McCarroll into her home to listen for himself with Mr. McCarroll admitting that the noise from the music playing in his premises was audible. Ms Thackray added that together with the noise from customers drinking on the street it was intolerable.

Ms Thackray noted that there was no valid planning permission for the premises to operate as a bar, yet it was and what was there to stop other premises taking the same course of action.

In noting that a Noise Abatement Notice had been served on Mr. McCarroll, Ms Thackray advised that she would like to know more about the consequences of that notice.

Brian Beddows – Environment Health Officer

Mr. Beddows advised the Panel of his relevant qualification in relation to noise nuisance and management thereof and those of his colleague who had been dealing with complaints about the premises. He provided the Panel with a chronological history of the complaints received and the actions taken therefrom and that sound levels taken in September had determined that there had been a statutory nuisance which resulted in a Notice being hand delivered to the premises on 7 October 2019.

Mr. Beddows advised that due to the nature of the barbers business the shop had little in the way of materials that could absorb sound or act as a buffer. He reiterated Ms Thackray's previous comments that the noise reverberated from buildings opposite rather than travelling through the fabric of the buildings and that Mr. McCarroll had acknowledged that when Ms Thackray had invited him into her property and the noise from the music being played was clearly audible. He noted that there were no set levels of noise when the statutory nuisance had occurred and that it was possibly due to the type of music being played as the human ear was more susceptible to certain types of frequencies. If acceptable levels were to be set this would have to be undertaken with the agreement of both parties.

Questions to the Representors

A Member of the Panel queried whether Ms Thackray had been aware of the Temporary Event Notices that Mr. McCarroll had applied for. Ms Thackray stated that Mr. McCarroll had not made her aware and that she had been advised to look on the Council's website by the Licensing Team.

Summaries

Councillor Mrs Rainbow again requested that, if granted, that usage of the extension to the hours be deferred until noise abatement works had been carried out.

Ms Thackray sought to emphasize the amount of stress the current situation was causing and asked the Panel to take into consideration the views of residents together with what, if any, conditions could be put in place in an attempt to resolve the situation. She also queried whether it was possible to restrict any further variations or the use of Temporary Events Notices. Ms Thackray's preferred outcome would be for the Panel to refuse the application to vary the premises licence.

Mr. Beddows noted that the Council had served a Noise Abatement Notice and emphasised the seriousness of that course of action. He added that it should stop any further nuisance but, if not, the consequences could lead to a prosecution with a fine being levied and/or the seizure of equipment used in the premises. Any decision on those would be taken in court proceedings. Mr. Beddows advised that Mr. McCarroll had agreed to work with EHOs to set agreed noise levels but that in the interim he was permitted to play motown music as there

was no bass element to that. Mr. Beddows asked the Panel to consider the imposition of conditions requiring doors and windows to remain closed and whether a limit on the number of customers that could congregate outside could be imposed and that no drinks would be allowed, with such signage being posted to that effect.

Mr. McCarroll stated that he had been operating the bar element of the premises for 12 months and during that time he had never had caused to call the Police to his premises adding that he wanted to work with Ms Thackray to resolve the issues. Mr. McCarroll stated that he wanted to work with the EHOs to set an acceptable level of sound, noting that dance music appeared to be problematic due to the bass element.

Decision

Panel's Decision:

Having considered all of the above in detail and based on the findings set out below; the Panel's decision was that:

1. The application be refused save for an amendment to Appendix 2 to add the condition agreed between the Applicant and the Police. This being:

“all scissors and other tools used in the cutting of hair to be stored away in locked storage from 8pm”

- 2.

he Panel determined that based on the evidence from the Objectors and the evidence from the Applicant, that varying the licence as proposed by the Applicant would not promote the Licensing Objectives.

Meeting closed at 3.51 pm.

Chairman