

## **DURHAM COUNTY COUNCIL**

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, Spennymoor - Council Offices, Spennymoor on **Tuesday 9 April 2019 at 11.00 am**

### **Present:**

**Councillor J Maitland (Chair)**

### **Members of the Committee:**

Councillors P Crathorne and L Kennedy

### **Also Present:**

Councillor J Blakey

Yvonne Raine – Senior Licensing Officer

Sarah Grigor – Solicitor, DCC

Lee Smurtwaite – on behalf of Northumberland Taverns, Applicants

Tim Robson – TJR Licensing on behalf of Applicants

Councillor Roger Cornwell - City of Durham Parish Council

Councillor Victoria Ashfield - City of Durham Parish Council

Councillor Carole Reeves - City of Durham Parish Council

### **1 Apology for Absence**

An apology for absence was received from Councillor D Brown.

### **2 Substitute Members**

Councillor Crathorne substituted for Councillor Brown.

### **3 Declarations of Interest**

There were no declarations of interest.

#### **4 Application for the Grant of a Premises Licence - Former Walkabout Premises, 13-15 North Road, Durham**

The Committee considered a report of the Senior Licensing Officer regarding an application for the grant of a Premises Licence in respect of the former Walkabout premises, 13-15 North Road, Durham (for copy see file of Minutes).

A copy of the application and supporting documentation had been circulated to Members, together with additional information from the City of Durham Parish Council maintaining its objection following an amendment to the application which add additional conditions relating to noise control measures at the premises.

Mr McKeon, other person also maintained his objections.

Councillor Cornwell of the City of Durham Parish Council provided a list of residential properties in the immediate vicinity of the premises which was circulated to all parties present.

Councillor Cornwell was invited to address the Sub-Committee on behalf of the City of Durham Parish Council, and commenced by asking a question of Mr Smurthwaite about his position with Northumberland Taverns. Mr Smurthwaite confirmed that he was not a Director of the company.

Mr Cornwell stated that the Parish Council had been told that The Loft would close if this application was granted but this was not apparent in the report bundle. He clarified that the Parish Council were not challenging the noise limitation measures within the premises.

The Applicants had said that the proposals reflected what had happened in the past as the former Walkabout, but this was 10 years ago and it had been a welcome move in the City to convert flats above the shops for students which now meant that there were high numbers in the immediate area. This would inevitably lead to disruption with up to 900 people leaving the premises between 2.00am and 2.30am. The Parish Council considered that the application should be refused or measures imposed to limit the impact of noise on those living in the flats.

Councillor Crathorne noted that 900 referred to full capacity and questioned the likelihood of this at all times.

Parish Councillor Cornwell acknowledged that those numbers could not be guaranteed but there could be up to 400 at an event without the need to notify the Police. There could be above 500 and up to 900 without any limitation other than the need to contact the Police.

Following a question from Councillor Kennedy, Mr Cornwell confirmed that the flats were mainly occupied by students who paid over £9k per year for their education and required a good night's sleep. People assumed that students were up at all hours but this was not the case and they had as much right as anyone else to a good night's sleep.

Parish Councillor Ashdale stated that, together with Mr McKeon, she had visited all the student flats on North Road on 7 April 2019, and had spoken to at least one resident in each property. The students had said that they were unaware of the application. The Parish Council had visited students in support of their right to a comfortable life in Durham. Most students wanted to work hard while in the City. They had made them aware of the potential for double the numbers of people in the premises. All those with bedrooms facing North Road said they were affected nightly by noise and more so at weekends. Some of the students regularly slept with ear buds or listening to music. A post graduate had said that they had changed their sleeping arrangements so that they could sleep later in the morning, however most were undergraduates with lectures to attend and could not do this. Those with rooms facing away from North Road were not as badly affected. She had asked the students to make written representation but the visit was too close to the hearing. However she was able to represent the students.

Councillor Kennedy noted that Councillor Ashdale had said that she could represent the students but no letters or signatures had been received from any student. Councillor Ashdale replied that she had no ulterior motive but represented the students as a Parish Councillor represented constituents. She had no reason to misrepresent their views.

Councillor Crathorne asked the Senior Licensing Officer to confirm that no written representations had been received. The Officer confirmed that they had not received any written representations or telephone calls from students.

Mr Smurthwaite made the point that the Applicants already had a very good relationship with their neighbours and had not had a single complaint in respect of the two nightclubs The Loft which had a capacity of 800.

Mr McKeon was invited to address the Sub-Committee. Mr McKeon commenced by referring to the standard of proof which in the Licensing Act 2004 stated that it was not to criminal level. It was difficult to get students involved in the process as they were only present for half the year. All the students they had visited had gone home for the Easter break. He appreciated that the gold standard was to bring witnesses but they were relying on names and addresses and were given permission to be contacted. He understood that this would be sufficient.

He was a resident of Neville Street and lived there when Walkabout opened. Neville Street was narrower than North Road with one-way traffic and was a route to student colleges. Very few residents now lived in the area. He now slept in his bathroom away from the noise. Students in North Road did not have another room to sleep in.

The takeaway at the bottom of the street was licensed to 3.00am. Some students had windows overlooking North Road and the takeaway.

Mr McKeon continued that noise limitation in the building did not recognise the noise in the street. The University had appointed an Officer to deal with concerns of residents but ironically it was the students who were being affected. The lack of sleep caused serious problems.

Councillor Crathorne asked if students were already making a noise in the street, prior to the submission of the application. Mr McKeon confirmed that to be the case. The Councillor also noted that there was a taxi rank and public house at that end of North Road. Mr McKeon said that the public house was not frequented by students but by locals.

Councillor Ashdale stated that noise levels would increase by 33% and mostly students would walk up Neville Street where Mr McKeon resided. There was a strong likelihood of numbers increasing on both Neville Street and North Road. 10 years ago there had been no student accommodation on North Road. The Councillor also made the point that those students in North Road who did go out some evenings would want to be able to sleep on other nights.

Councillor Maitland noted Mr McKeon's comments that the clientele in the public house differed to these premises but she did not consider that this could be guaranteed. When the flats opened the landlords must have been aware that Walkabout may re-open. Councillor Maitland also noted that Notices would have been displayed about proposals for the premises, both in respect of planning and licensing applications.

Parish Councillor Ashdale stated that the students did appreciate that being in the centre of the City they would experience levels of noise but they were increasingly saying that their lives were being disturbed. As temporary residents of the City the students did not think they had the right to complain and the University had not explained that they could.

Mr McKeon continued that the students and the locals did not mix. He advised that during term time Mr Smurthwaite held student nights when no locals would visit the premises.

Following a question from Councillor Blakey Mr McKeon advised that locals visited Bishopgate, although 10 years ago they frequented Walkabout.

Parish Councillor Cornwell clarified that the public house operated normal pub hours and attracted permanent residents. Mr Smurthwaite had said that the premises would only be open during term time so he was pitching the venue at students.

Mr T Robson was invited to address the Sub-Committee on behalf of the Applicants. Mr Robson provided background to his licensing experience and stated that the Applicants had asked him to create a training procedure to ensure the safe operation of the premises, focussing on the safety of young people.

The premises was once the Royal Cinema with a seating capacity of 1090, and as such was a more fortified building than those of recent times. The premises was known Walkabout in 2003 until 2009, and in 2010 became a live music venue. After closing Mr Smurthwaite took over the premises in 2012, opening as a late night bar and Chinese buffet until 2013. The premises would improve the appearance of North Road and was to be a pub/eatery during the day and a bar at night.

The nightclub would not be open every day of the week and was aimed primarily at student clientele.

Mr Smurthwaite understood why the representations had been made and a number of conditions had been included to alleviate concerns. The requirements of Durham Constabulary had been accepted and would happily be implemented. The provisions of Section 150(4) would not be included. The applicants did not feel it was appropriate for accompanied 16 or 17 year olds to be allowed alcohol with food.

Environmental Health had conducted a detailed site visit and concerns had been addressed through condition. The representation had been withdrawn.

Turning to the objections of the Parish Council, these related to breakout of noise from the premises but there was no mention of noise outside. Nevertheless door supervisors would ensure that customers kept noise levels down, and there would be notices on the door to this effect. The venue was designed to minimise the breakout of noise. The application now included sufficient and appropriate noise control measures.

He appreciated the concerns of Mr McKeon about quality of life and it was saddening that he had been forced to move to his bathroom for sleep. He had also expressed concern about noise from The Loft and Studio and also the public house. However whilst he sympathised with Mr McKeon, there was

no evidence that noise levels would increase as a result of customers leaving the new venue. The company's Business Plan was to close The Loft which backed onto Crossgate. He had an unvalidated document from a student who lived directly above the foodstore on North Road asking when Walkabout was going to re-open. He was one of seven students who lived in the flat and who had all said that they had no issues with The Loft and Studio, similarly from the students in the flat above his own. Mr McKeon's representations were generic and about other premises. There had been no physical representations from any students and no complaints about noise. Individuals had been asked to write but had not. The names and addresses of the students referred to had not been provided. Mr McKeon accepted that there had been no complaints from students. In his experience residents complained about students, and this was still an issue in the City.

Mr Robson referred to the Thwaites case and the consideration of 'real' evidence to support objections. There had been no real evidence that the premises would exaggerate noise in North Road and experts had said that enough had been done to alleviate concerns in this regard.

Mr Smurthwaite addressed the Sub-Committee. He explained that Northumberland Taverns operated The Loft and Studio with a combined capacity of 840. They were moving the business downstairs purely for commercial reasons. The venue was better in terms of sound-proofing than The Loft. They were part of Pubwatch and had good dialogue with Agencies. Customers were successfully dispersed from the premises and it was incorrect to say that students just travelled up Neville Street. First year students went into the City Centre and the Viaduct area held less than a third of the total number of students. All they were doing was switching venues – it was not a new business. They operated one of the biggest capacity venues in the City without problem. Customers would be safe and being located on the ground floor they would be dispersed more efficiently.

Following a question from Councillor Kennedy regarding the taxi rank 'corridor', Mr Smurthwaite explained that the premises had a corridor where people were kept safely until there were available taxis. Mr Robson added that the company was wary of young students wandering the streets and this was a safe room for them to wait.

Councillor Cornwell asked what percentage of students used taxis. Mr Smurthwaite confirmed that this was between 40 and 50%. Customers were clicked in and out so they could ensure that everyone was dispersed and he was the last person to leave.

Councillor Ashdale argued that this was second hand information and no more first hand than the information she had provided about the students'

views. Mr Smurthwaite clarified that he was the Licence Holder and personally clicked customers in and out of the premises.

Councillor Maitland asked if they called for taxis for their customers and was advised that if any of their customers were intoxicated they would pay for a taxi to take them safely home. Councillor Cornwell expressed concern that the premises should not serve customers who were intoxicated, and Mr Smurthwaite clarified that they were not served alcohol but did allow them into the venue to ensure their safety.

Mr McKeon stated that at a PACT meeting it had been said by a PCSO that the main problems affecting residents was noise caused by students going home after a night out. The Chair stated that there were no Police representatives in attendance to confirm that this was said, and the Police had not made representation about the application.

Mr Smurthwaite responded that he had a good relationship with the Police. He was aware that student parties could cause problems in the City, not licensed premises. Student parties could go on all night and he considered it to be preferable for students to visit nightclubs where their safety could be ensured.

All parties were invited to sum up.

Councillor Cornwell referred to their original letter of representation and confirmed that the Parish Council were not pursuing their concerns about noise breakout from the premises but the impact of up to 900 people emerging after 2.00am which would cause significant disturbance to residents. The residents in North Road were entirely students who queued for student accommodation and may not have chosen to live on North Road. These students were 19 years old and it was entirely reasonable for their complaints to be relayed through their Councillor.

The Parish Council would wish the Sub-Committee to refuse the application but if granted, he asked the Sub-Committee to consider the following:

- Imposing a limit on capacity to that currently in place for The Loft
- Members examine the Business Plan to confirm that The Loft will close
- the hours of operation be restricted to the Framework hours.

Mr Robson stated that he would oversee policies and procedures at the premises. Measures had been put in place to address concerns and prevent public nuisance, and there was no guarantee that students would all walk up Neville Street. No representations were received from students and the Fire Authority had no issues with capacity. The hours requested were reasonable and this was what the premises needed to be viable.

Mr Smurthwaite stated that the company currently operated two late night venues and with the new venue there would be no change to hours, security and their policies. The existing venues had not had any problems in 8 years of operation.

At 12.40pm the Sub-Committee **Resolved** to retire to deliberate the application in private. After re-convening at 1.00pm the Chair delivered the Sub-Committee's decision.

In reaching their decision the Sub-Committee had considered the report of the Senior Licensing Officer, the verbal and written representations of the City of Durham Parish Council and other person, and the verbal representations of the Applicant and his representative. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

**Resolved:**

That the Premises Licence be granted as follows:

The sale of Alcohol from 09.00 hrs until 02.00 hrs Monday to Sunday, the provision of Regulated Entertainment from 09.00 hrs until 02.30 hrs Monday to Sunday and the provision of late night refreshment from 23.00 hrs until 02.30 hrs each day.

The following conditions be attached:

1. A noise limiting device to control the amplified noise levels within the venue will be implemented. It will be set at a level of which is acceptable with Durham County Council's Environmental Health and Consumer Protection Officer
2. Entry and egress from the venue will be through the front entrance doors and the current acoustic lobby will be operated ensuring that the doors are not fixed in the open position.
3. On approach to the terminal hour of the venues operation the music will reduce in temp and volume and create a calmer environment for the exodus.
4. Verbal announcements will be given to advise patrons to leave quietly and signage at exit points will support the verbal announcements.
5. Risk assessments will be carried out externally especially at the terminal hour to ensure that any customers smoking at the front of the venue or awaiting transport will keep their voices to a lower level. This will be enforced by the security officers.



6. The delivery of goods, collection of waste and bottling out will be carried out at a time when there will be little or no impact on any residents. These processes will not take place between 23.00 and 07.00 hrs
7. Staff will be actively trained both initially and every 6 months on the need to maintain the licensing objectives and in particular, the prevention of public nuisance.