

Minutes

LICENSING SUB-COMMITTEE

20 January 2022

Meeting held virtually - Live on the Council's YouTube channel: Hillingdon London



	<p>Committee Members Present: Councillor Simon Arnold (Chairman) Councillor Darran Davies Councillor Janet Gardner</p> <p>LBH Officers Present: Steven Dormer, Licensing Officer Chantelle McLeod, Legal Officer Steve Clarke, Democratic Services Officer</p> <p>Responsible Authorities: Adam Stitson (Applicant), Anti-Social Behaviour & Environment Investigations Team Jhini Mukherjee, Licensing Authority</p> <p>Licence Holder's Representatives: Surendra Panchal, Licence Holder's Agent Aditya Nandal, Designated Premises Supervisor</p> <p>Interested Parties: Councillor Philip Corthorne, Ward Councillor for West Ruislip Heather McNeill, Local Resident Mark Batson, Local Resident</p>
51.	<p>APOLOGIES FOR ABSENCE (<i>Agenda Item 1</i>)</p> <p>There were no apologies for absence.</p>
52.	<p>DECLARATIONS OF INTEREST IN MATTERS COMING BEFORE THIS MEETING (<i>Agenda Item 2</i>)</p> <p>None.</p>
53.	<p>TO CONFIRM THAT THE ITEMS OF BUSINESS MARKED PART I WILL BE CONSIDERED IN PUBLIC AND ITEMS MARKED PART II WILL BE CONSIDERED IN PRIVATE (<i>Agenda Item 3</i>)</p> <p>It was confirmed that all items were in Part I and would be considered in Public.</p>
54.	<p>MATTERS THAT HAVE BEEN NOTIFIED IN ADVANCE OR URGENT (<i>Agenda Item 4</i>)</p> <p>None.</p>
55.	<p>APPLICATION FOR THE REVIEW OF A PREMISES LICENCE: KHO KHO</p>

RESTAURANT, 101-103 HIGH STREET, RUISLIP, HA4 8JN (Agenda Item 5)

INTRODUCTION

Steven Dormer, Licensing Officer, introduced the application for the review of a premises licence at Kho Kho Restaurant, 101-103 High Street, Ruislip to bring the licence into compliance with the Prevention of a Public Nuisance licensing objective. The Sub-Committee were informed that the application had been prompted by complaints from local residents to the Anti-Social Behaviour Team of noise emanating from the premises, primarily whilst regulated entertainment had been taking place, and the noise disturbances had often lasted long into the night. Despite the intentions of the premises' management to curtail the noise, they had little effect in addressing the disturbances and conforming to the licensing objectives.

Members were informed that further major concerns were raised following the organising of a fireworks display in a narrow space adjacent to the restaurant on 06 November 2021, whereby no risk assessment had been in place and consideration of neighbours and the general public had not been properly taken into account. It was highlighted that noise abatement notices had been served on the premises with little credence taken by the premises' management, within a week the notice had been breached.

Upon a site visit in September 2021, the premises were found to be operating at a good level of compliance by licensing officers; however, it was noted that no regulated entertainment was taking place during the officers' site visit. During the site visit, officers had met with the premises manager who reassured them that plans were in place to combat the noise issues. A small number of days later, local residents raised concerns that the premises was once again not conforming with the objectives of the Licensing Act 2003. The Licensing officer recommended that, amongst other conditions outlined in the officer report, the Sub-Committee curtail the hours at which regulated entertainment could occur as this appeared to be the root of most noise disturbances experienced by residents.

THE APPLICANT

The Applicant addressed the Sub-Committee outlining the application to review the premises licence and the reasons for submitting the application. As far as the Anti-Social Behaviour Team were concerned, the issue related primarily to noise disturbances, incidents of which had occurred as early as June 2019 due to a noisy extractor fan which could clearly be heard by residents in adjacent properties, the noise continued throughout 2019 and in October of that year, a noise abatement notice was served on the premises requiring management to prevent the extractor fan from causing a nuisance. Restaurant closures due to Covid-19 restrictions had limited the occurrence of noise disturbance throughout 2020; however, in 2021, when the restaurant re-opened, reports of noise nuisance from the extractor fan were immediately received and a further noise abatement notice was then served in May 2021.

The Sub-Committee were informed that from March 2021, the Council had started receiving reports of loud amplified music emanating from the premises as a result of regulated entertainment. Reports from residents indicated that this was happening late at night and at least once per week. In October 2021, Anti-Social Behaviour officers witnessed this type of nuisance and served a separate noise abatement notice specifically with regard to loud amplified music. Following calls from residents, Officers witnessed further noise disturbances on 16 October 2021 deemed to be a statutory

noise nuisance. Officers then attended the premises to notify management that this was a statutory noise nuisance at which time, management requested a further week to address the noise issue; officers notified management that sufficient warnings had been issued over the matter and that the volume of music playing should have been lowered immediately. The premises management made suggestions to officers that the residents above the restaurant should soundproof their properties to a higher standard; Members were notified that officers had made it clear that it was the responsibility of the management of the premises to take those measures and that it was their responsibility to ensure that any music emanating from the premises should not cause a nuisance to neighbours. There were further reports of noise nuisance later in October 2021 which were also witnessed by officers and management was notified that this was a breach of the noise abatement notice.

The Sub-Committee's attention was drawn to Appendix 1 to the officer's report, specifically pages 37 – 44 of the agenda describing the events of 06 November 2021 where the premises had organised a fireworks display, which took place outside the restaurant in the rear alleyway for approximately 30 – 50 individuals. Officers present at the time noted that the fireworks were of a professional display quality and not the type of fireworks that would be used domestically in people's back gardens. When officers asked management to show evidence of a risk assessment or health and safety precautions taken for the display, nothing of the sort appeared to be in place; officers had also noted that the area designated for the display appeared narrow and was surrounded by waste bins, discarded cardboard boxes and gas canisters. Following the display, there were reports that live drummers were performing in the restaurant, further prolonging the noise nuisance that evening. The Sub-Committee also heard that the following day, reports from residents explained that allegedly a ladder had been found on the roof where the premises had attempted to set off the fireworks from the roof.

The Applicant explained that the licence holder had been given a number of notices and plenty of time to take appropriate steps to rectify the concerns of residents; however, it was evident that these steps had not been taken. As such, the Anti-Social Behaviour Team felt that the application to review the licence was appropriate and that the Sub-Committee should take steps to address the occurrence of noise nuisances in accordance with the licensing officer's recommendations. The Applicant specifically raised concerns in the way the premises management had been interacting with the local residents and sought improvement to that effect.

With regard to the fireworks display on 06 November 2021, the Sub-Committee sought clarification whether an attempt was made to rectify the situation immediately once management were made aware of the officers' and residents' concerns surrounding the display. It was confirmed that no attempt to address the concerns was made.

RESPONSIBLE AUTHORITY

Jhini Mukherjee introduced herself on behalf of the Licensing Authority as the responsible authority. Complete support was given to the application to review the premises' licence and it was highlighted that officers concurred with the recommendations laid out in the officer report primarily on the grounds of prevention of a public nuisance, but also on grounds of public safety. It was noted that the licensing authority had serious concerns relating to the repeated instances of excessive noise disturbances coming from the premises and the apparent lack of action taken by management regarding the noise abatement notices. Reference was made to the Anti-Social Behaviour officers' witness statements whereby they had witnessed statutory

noise nuisances and breaches to noise abatement notices; it was highlighted that, upon further investigation, officers found that all doors to the premises were open whilst the loud amplified music was playing, stressing that the current licence had a condition in place to ensure doors and windows were closed during regulated entertainment and that even fairly straightforward measures to curtail the noise were not being taken.

It was also noted that the fireworks display on 06 November 2021 further raised concerns that management at the premises were undermining the licensing objective of public safety as the display took place in a narrow alleyway with a crowd of people congregating close by. It was highlighted that any licenced premises hosting a fireworks display has a duty of care to ensure the safety of their neighbours and visitors. The premises were also found to be breaching Covid-19 restrictions on two separate occasions and had been served with fixed penalty notices. Officers highlighted that the repeated instances of noise disturbance did not instil confidence in the ability of the management to operate the premises in a responsible manner and to uphold the licensing objectives effectively. Though management had expressed their willingness to cooperate, it was evident that advice from Anti-Social Behaviour officers had not been followed up.

INTERESTED PARTIES

Councillor Philip Corthorne, ward councillor for West Ruislip, had submitted representations and was present to address the Sub-Committee highlighting that he fully supported the officer's recommendations as the management of the premises did not appear to be receptive to what they had been advised on multiple occasions. It was specifically highlighted that the issue of the noisy extractor fan had not been fully resolved despite the premises being aware of the issue for a number of years.

Heather McNeill, a local resident, had submitted representations and was present to address the Sub-Committee. She concurred with many of the points that had previously been raised by those present and emphasised that her views on the matter had been thoroughly laid out in the representation included in Appendix 5 to the officer's report.

Mark Batson, a local resident, had also submitted representations and was present to address the Sub-Committee noting that he was the resident that intervened with Anti-Social Behaviour officers on 06 November 2021 when the fireworks display was taking place, and confirmed that the fireworks were of a professional display standard, not domestic fireworks. The Sub-Committee heard that, with regard to the breaches of the noise abatement notices, even though their property was one of those slightly less impacted in the immediate vicinity, the noise disturbances had occurred so often that residents did not have the fight to make formal complaints every time they had occurred. The residents noted that they were also patrons of the restaurant and enjoyed the food served regularly, they supported the business and did not want to see it suffer but the impact on their day to day lives from the noise disturbances was too much for the current situation to continue.

The Sub-Committee made reference to text messages included in the agenda referring to a payment of £1,000 for double glazing to address soundproofing issues from the premises. Residents assured Members that, although the double glazing may have been installed, it was not an effective form of soundproofing as the noise emanated through the floors and walls of the building.

Members discussed the hybrid nature of the premises as it appeared to be a restaurant

until 2100 hours, at which point the amplified music became louder and there were regular performances from DJ's and live instruments. Residents highlighted these performances as a major source of the noise disturbances experienced.

LICENCE HOLDER

Surendra Panchal, the Licence Holder's representative, was present to address the Sub-Committee noting that the licence holder was seeking harmony between residents and the business. Members were informed that once the Licence Holder had been notified of the application to review the premises licence, they had attempted to schedule a meeting with the responsible authorities to discuss the appropriate measures to take moving forward. Officers confirmed that this was the case, however they felt that the appropriate forum for such discussions was a formal Licensing Sub-Committee hearing.

The Sub-Committee heard that the premises was an Indian family style restaurant that tended to receive large bookings for primarily Indian functions on Friday and Saturday nights. The popularity of the restaurant had increased throughout 2021 especially during times of little to no Covid-19 restrictions. It was noted that from Sunday to Thursday nights there was no loud music being played. It was also confirmed that double glazing windows had been installed and a guarantee was given that doors would be closed during regulated entertainment. The premises was also working towards installing a second entrance door effectively creating a small foyer which would act as a noise barrier at the front of the premises. Officers confirmed that this may indeed help prevent noise disturbances at the front of the property but would be unlikely to alleviate the disturbances experienced by the residents above the premises who had been most affected by the noise.

With regard to the officer's recommendations, it was highlighted that the Licence Holder would be happy to adhere to the recommendation of removing the Designated Premises Supervisor and replacing them with an individual who would be thoroughly trained. Members were also informed that the premises would be happy to install a noise limiter within the restaurant and adhere to a number of the officer's recommendations. Additionally, it was offered that residents could be provided with a phone number for the new Designated Premises Supervisor to which they could contact should they feel the noise emanating from the restaurant was excessive and neighbours' meetings could be held on a monthly basis to highlight any ongoing concerns. On the matter of the noise limiter, officers welcomed this but noted that this would be of limited effect where live music, specifically drums, were concerned.

The Licence Holder's representative requested that the Sub-Committee consider the following in their decision:

- Last entry to the premises to be at midnight;
- Regulated Entertainment would cease at 2300 hours Monday to Thursday, at 0100 hours on Friday nights and at 0130 hours on Saturday nights.

DISCUSSION

The Sub-Committee highlighted the necessity for all staff, not just the Designated Premises Supervisor, to be appropriately trained in health and safety matters. Concerns were also raised that, despite the Licence Holder's representative claiming that suitable steps had been taken to cooperate with neighbours and address the noise

issues following the numerous noise abatement notices, it appeared that the necessary steps were not in fact being taken leading to the continued disturbance to local residents. Further to this, it appeared that the frequent noise issues had been going on for so long that residents were exacerbated with the situation and were not report every instance of noise disturbance. Members emphasised that any contact phone number between residents and the new Designated Premises Supervisor should be working at all times that the premises was open.

With regard to the fireworks display on 06 November 2021, it was confirmed that the function that evening was a Diwali celebration, a major festivity in the Indian community. The Sub-Committee emphasised that the reason for the event was not an excuse for not adhering to the licensing objectives or appropriate health and safety requirements. The Designated Premises Supervisor accepted that they had not realised that there were specific health and safety requirements they must adhere to although noted that they had hired an external company for the display who should have raised this issue with them. The Licensing Officer highlighted that the Council offered an advice service for the appropriate running of such events from a health and safety perspective, although the service was not compulsory, the Licence Holder's representative expressed an interest in accessing this advice service for any future events of a similar nature. By way of clarification, the Applicant highlighted that from an Anti-Social Behaviour perspective, no future public fireworks display should take place in the same location as the 06 November 2021 fireworks.

Residents gave some clarifications as to their level of contact with the current Designated Premises Supervisor noting that, despite multiple contact attempts and requests to turn down the volume of music emanating from the premises, requests had largely been ignored. It was only at this point that residents felt the need to notify the Council upon any noise disturbance.

Members also sought clarification that the extractor fan issue had now been resolved by the premises' management. The Licence Holder's representative confirmed that this particular noise issue had been resolved.

CLOSING REMARKS

The Licence Holder's representative requested that, when it came to the Sub-Committee's deliberations, that they weigh up the matters heard in a balanced manner accounting for both the business' and the residents' needs.

On behalf of the Licensing Authority, Jhini Mukherjee highlighted that they were maintaining their representation and requested that the Sub-Committee take into account the volume of noise abatement notices and noise disturbance reports that had been received.

The Applicant wished to highlight that the Anti-Social Behaviour Team did not currently have sufficient confidence in the Licence Holders to undertake remedial work of a practical and management nature to appropriately mitigate the concerns raised by residents. It was also emphasised that the hybrid nature of the premises, being operated as a restaurant then a late-night drinking venue, was one of the root causes of the disturbances experienced by residents.

There were no further closing remarks.

THE DECISION

The Sub-Committee listened to all representations made and considered the Responsible Authorities' recommendation to replace the current Designated Premises Supervisor, modify regulated entertainment from the licence and modify the conditions on the current licence. In addition, the Sub-Committee welcomed the conditions offered by the Licence Holder and their willingness to commit to the licencing objectives at all times.

The Sub-Committee considered all relevant evidence made available to it and in doing so took the following into account:

- Licensing Objectives, Licensing Act 2003
- Hillingdon's Licensing Policy
- Guidance issued by the Secretary of State under S.182 of the Licensing Act 2003

The decision of the Sub-Committee is as follows:

The current Designated Premises Supervisor was to be removed and replaced with a Designated Premises Supervisor suitably trained.

All current conditions on the licence were to remain in place in addition to all of the conditions recommended by the Responsible Authorities together with additional conditions considered by the Sub-Committee as follows:

- 1) Last entry to the premises shall be 2230 hours daily.
- 2) Regulated Entertainment up until 2300 hours must adhere to the relevant conditions of the licence.
- 3) Regulated Entertainment should cease at 2300 hours.
- 4) Regular Noise boundary checks conducted by a manager.
- 5) All boundary checks must be recorded in an incident logbook.
- 6) Windows and doors must be closed during regulated entertainment.
- 7) All staff must receive health and safety training by an accredited course provider.
- 8) A noise limiter shall be in use to ensure that noise emanating from the speakers does not cause a nuisance to nearby residents.
- 9) A working contact number and email address to be provided to residents at all times.

REASONS

The Sub-Committee carefully considered the current operating regime at the premises and was concerned to hear about the repeated incidents of statutory nuisance and breaches occurring at the premises which has caused unnecessary disruption and distress to local residents.

The Sub-Committee recognised the need for businesses to continue trading however, this must not be at the expense of local residents. Local businesses are reminded about their obligations to adhere to regulations to ensure the licensing objectives are being adhered to.

The Sub-Committee considered the recommended conditions proposed by the Responsible Authorities and the Licence Holder's views in relation to the issues raised and proposed conditions. As such, it was determined that the removal of the current designated premises supervisor along with the modification of the conditions on the licence struck a fair balance in relation to the local residents and the operating schedule of the business.

RIGHT OF APPEAL

The relevant applicant for the premises licence or any other person who made relevant representations to the application may appeal against the Council's decision to the Justices Clerk at the Uxbridge Magistrates Court. Such an appeal may be brought within 21 days of receipt of this Notice of Decision.

No decision made by the Council will have effect during the time period within which an appeal may be brought and until such time that any appeal has been determined or abandoned.

The meeting, which commenced at 10.00 am, closed at 12.43 pm.

These are the minutes of the above meeting. For more information on any of the resolutions please contact Steve Clarke - 01895 250636 or email: sclarke2@hillington.gov.uk Circulation of these minutes is to Councillors, Officers, the Press and Members of the Public.

The public part of this meeting was filmed live on the Council's YouTube Channel to increase transparency in decision-making, however these minutes remain the official and definitive record of proceedings.