

Date of Hearing	03 October 2024
Members of Panel	Councillors Alistair Willoughby (Reserve Member), Stewart Willoughby, Tim Johnson (Chair), Steve Patmore Legal Adviser: Simao Paxi-Cato
Licence Holder	Antonio Miceli
Premises Address	26 Bucklersbury, Hitchin, Hertfordshire SG5 1BG
Date of Application	9 August 2024
DECISION	<p>This is an application for a variation of an existing premises licence under Section 34 of the Licensing Act 2003.</p> <p>The Sub-Committee has read the material presented to it and has listened to all the evidence and submissions. The Sub-Committee has considered the National Guidance and the Statement of Licensing Policy and has come to the following decision:</p> <p>The Sub-Committee has decided to refuse the application.</p> <p>The Sub-Committee has found that the licensing objectives have not been met by the application and is not satisfied that any amendments to the application or conditions attached to the licence could ensure that the licensing objectives are met.</p>
LICENSABLE ACTIVITIES AND TIMINGS	The licensable activities, timings and conditions on the existing premises licence remain unchanged.
CONDITIONS DEEMED APPROPRIATE FOR THE PROMOTION OF THE LICENSING OBJECTIVES	<p>The Sub-Committee recognises that conditions will <u>only</u> be imposed on a licence where conditions are appropriate for the promotion of one of the four licensing objectives. The Sub-Committee will only impose conditions on a licence where relevant representations have been made and it considers that it is appropriate to impose conditions as a result of these representations.</p> <p>The Sub-Committee did not feel the need to impose any Conditions.</p>
EFFECT OF FAILING TO COMPLY WITH CONDITIONS	The effect of failure to comply with any of the conditions attached to the licence or certificate is a criminal offence, which upon conviction, could result in an unlimited fine or up to six months imprisonment or both.
STATUTORY GUIDANCE	The Sub-Committee has taken into account the Guidance issued under Section 182 of the Licensing Act 2003 (December 2023)

CONSIDERATIONS	<p>version) in reaching its decision. It has found the following sections to be of particular relevance in reaching this decision:</p> <p>Sections 1.3; 1.4; 1.7; 1.8; 1.9; 1.10; 1.16; 1.17; 2.21; 2.22; 2.23; 2.24; 2.25; 2.27; 8.41; 8.42; 8.44; 8.47; 9.15; 9.42; 9.43; 9.44; 10.8; 10.9; 10.10; 10.13; 10.14; 10.61; 10.62; 10.63; 10.64; 10.65; 10.66.</p>
LICENSING POLICY CONSIDERATIONS	<p>The Sub-Committee has taken into account the North Hertfordshire District Council's Statement of Licensing Policy in reaching its decision. They have found the following sections to be of particular relevance in reaching this decision.</p> <p>Sections B6; B8; B9; C1.3; D1.4; D1.5; D1.6; D2.1; D2.4; D2.5; D2.6; D2.8; D2.9; D2.11; D3.1; D3.2; D3.3; D3.4; D6.2; D6.3; D6.4, D6.6, D6.7, D6.8, D6.9, E1.3.1; E1.3.2; E1.3.3; E2.5.1; E2.7.1; E3.1.1; E3.1.3; E3.1.4; E3.1.5; E3.2.1; E3.2.2; E3.2.3; E3.2.4; E3.3.1; E3.4; E3.7.1; E3.9.1; E3.9.3; F3.1; F3.4; F3.5; F5.1; F5.3; F5.5; F5.6; F5.7; F6.1.1; F6.1.2; F7.4; F7.5; F8.1; F8.2; O1.1; O4.2.1.</p>
RATIONALE FOR DECISION	<p>The Committee notes that the premises are a Grade II listed building. The Committee was concerned that whilst the installation of the acoustic barrier was made with good intentions as a permitted measure to prevent public nuisance, it was concerning that the Applicant had not considered that the installation might attract planning control and was unable to produce any objective evidence that the installation was lawful.</p> <p>Given that this installation is a central part of his noise management plan; the Committee considered that there was no good reason given for why the Applicant had not consulted planning as advised in the local licensing policy. As a result of the Applicant's omission, the Committee was deprived of the opportunity to consider the viewpoint of the planning department as envisaged in the Local Licensing Policy and determined that there would be a real risk of a clear conflict between the decisions of the two regimes which is not in the interests of the Applicant or the Community.</p> <p>A breach of planning control goes to both crime (as it is a criminal offence) and also to public nuisance, as it is unclear the condition of an acoustic barrier is capable of being met by the Applicant without him breaking the law. Without one, the Committee was satisfied that there would be a public nuisance.</p> <p>Further or alternatively, even with the current acoustic barrier, the Committee was only able to give limited weight to the evidence of the Applicant about how effective it has been or would be to prevent public nuisance. This is because the recording was taken at a time that did not replicate the conditions that would be experienced by the community at the times that the premises are used as a karaoke venue. It is relevant to consider the noise from the music being</p>

	<p>played, alongside the noise created by the visitors of Let's Party in order for there to be confidence that the noise levels would be at acceptable levels.</p> <p>The Committee gave limited weight to the evidence of Mr Stone about his subjective perception of the level of noise and considered that a recording of some form would have been helpful, even if a decibel reading was not taken. However, when considered alongside the recorded evidence provided by the objectors, it was clear that the level of noise being experienced by neighbours was not at acceptable levels. However, the Committee also wishes to make it clear that the recordings provided by the objectors predated the date when the Applicant put in some of the more recent measures and therefore, had there been better and more reliable evidence of the potential effect of the acoustic barrier, the absence of recent recordings of noise nuisance (notwithstanding the concerns of reprisals) may have resulted in a different decision being made.</p> <p>The Committee considered on the overall evidence that there has been a number of concerns over a prolonged period over the management of the premises and that to vary the premises licence to extend the hours of operation would not be in accordance with the licensing objective until there is demonstrable and prolonged evidence of the licensing objectives being met on the current licensing terms and the Committee noted that the Applicant adopting many of the conditions that he had proposed or formed part of the noise management plan would go a significant way towards the future prospects of any future variation application. However, given the problems experienced with anti-social behaviour and disorder, extending the drinking hours to 1.00am would be likely to see an increase in anti-social and criminal behaviour and disorder without a robust management plan being in place with the evidence to support its effectiveness.</p> <p>The Committee found that the Applicant was being reactive instead of proactive based on the evidence before them.</p>
COMMENCEMENT DATE	This decision takes immediate effect.
RIGHTS OF APPEAL	<p>An appeal may be made against this decision by:</p> <ul style="list-style-type: none"> • the holder of the premises licence • any person that made a relevant representation in relation to the application <p>The appeal and appeal fee must be lodged with the Clerk to Stevenage Magistrates Court no later than twenty-one (21) days after the day on which the parties were notified by the Licensing Authority of this decision.</p>
RIGHTS OF	At any stage, following the grant of a premises licence, a responsible

REVIEW

authority, such as the Police, or any other person, such as a resident affected by licensable activities at the premises, may apply to the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. The review is a request for the Council to look at the existing licence and decide whether its conditions are adequate to meet the four licensing objectives defined under the Licensing Act 2003.