

SOUTHEND-ON-SEA CITY COUNCIL

Meeting of Licensing Sub-Committee B

Date: Thursday, 6th April, 2023

Place: Committee Room 3 - Civic Suite

Present: Councillor M Berry (Chair)
Councillors N Folkard and A Dear

In Attendance: A Brown, A Byrne, T Row, M Newton and T Bahannack

Start/End Time: 10.00 am - 1.20 pm

846 Apologies for Absence

There were no apologies for absence.

847 Declarations of Interest

No interests were declared at the meeting.

848 Application for Review of Premises Licence - 12 Clifftown Road, Southend-on-Sea, SS1 1AB

The sub-committee received a report of the Executive Director (Neighbourhoods and the Environment) concerning an application by the Environmental Health Team at Southend on Sea City Council, in its capacity as Responsible Authority, for the review of the existing Premises Licence at Twelve Brunch & Cocktails (previously known as Twelve Burger and Beer), 12 Clifftown Road, Southend-on-Sea, SS1 1AB.

The application was presented by Mr Ollie Nawrat, Regulatory Services Officer on behalf of the applicant. Mr Paul Pearse, Regulatory Services Officer, was also in attendance as a witness for the applicant and gave evidence.

Mr Graham Booth, the licensee's legal representative, attended the hearing remotely via the MS Team platform and gave evidence on behalf of the licensee. The licensee, Mr O Bello, was also in attendance and gave evidence.

The grounds for the application was on the basis that the licensing objective regarding the prevention of public nuisance was being undermined through significant noise emanating from the premises through amplified music. Additionally, the licensee and relevant parties at the premises had continually failed to comply with repeated informal and formal instructions from the Responsible Authority and that the premises had twice failed to comply with a legal notice served under the Environmental Protection Act 1990.

In determining the application, the sub-committee listened to all the evidence and submissions and read all the documents. The sub-committee had regard to the Statutory Guidance Notes and Southend-on-Sea City Council's Statement of Licensing Policy. It considered the four licensing objectives namely the prevention

of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

On the basis of the evidence presented to it, the sub-committee concluded that given the significant amount of evidence collected by the Environmental Health Team, as a Responsible Authority and who are experts in their field, it was evident that the licensing objective for the prevention of public nuisance was not being promoted and that there was no effective and responsible management of the business activities to control the level of noise nuisance emanating from the premises. The sub-committee also felt that regular noise assessments undertaken by the licensee, as required by the conditions of the licence, were inadequate and meaningless.

The sub-committee was mindful that it is a criminal offence to fail to comply with an abatement notice and it is also a breach of their licensing conditions. Paragraph 11.24 of the guidance issue under the Licensing Act 2003 states "Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts." The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual, however, the sub-committee deemed the non-compliance with an abatement notice clearly demonstrated the management of the premises were not preventing the occurrence of public nuisance or its persistent re-occurrence and had failed in its duty to promote the licensing objective in the prevention of public nuisance.

The sub-committee regarded this situation as serious and took the view that the licence holder had failed in his duty to comply with the conditions on the premises licence and the licensing legislation. Due to the gravity of the situation and taking into account promotion of the prevention of public nuisance objective, including acting as a deterrent in accordance with the Licensing Act 2003, the sub-committee believed the most appropriate and reasonable measure would be to remove the permission for regulated entertainment in the form of recorded or amplified music at the premises from the licence. It therefore:

Resolved:-

That regulated entertainment in the form of recorded or amplified music at the premises therefore be hereby removed from the licence and the following condition will therefore be added to the licence:

"No recorded or amplified music shall be played at the premises at any time."

Chair: _____