



LICENSING ACT 2003

Application for a New Premises Licence

Decision Record

APPLICANT:	Licensing Authority as Responsible Authority under s.53(2) the Licensing Act 2003
PREMISES:	Melford House, Nos. 17-19 Church Avenue, Farnborough, GU14 7AT
DATE OF HEARING:	Friday, 1st April, 2022
MEMBERS SITTING:	Cllrs P.J. Cullum, Christine Guinness and Jacqui Vosper (Chairman)

DECISION

To modify and add to the existing conditions of the premises licence under s.52(4) of the 2003 Act in line with the review application. To recommend, by way of informative, certain further steps which should be taken by the premises licence holder.

REASONS

The Sub-Committee considered an application made under section 51 of the Licensing Act 2003 for a review of the premises licence by the Licensing Authority in its capacity as Responsible Authority under s.53(2) of the same Act.

- 1 The Licensing Sub-Committee has had regard to the application and all relevant representations made both in writing before the hearing, and orally by those attending the hearing.
- 2 The Licensing Sub-Committee considers, as a matter of evaluative judgment, that it is appropriate and proportionate to modify and add to the conditions of the premises licence in order to promote the licensing objective of the prevention of public nuisance, and to do so in line with the steps sought in the review application.
- 3 Informatives (which are not binding on the premises licence holder) are also included in this decision, setting out steps which the premises licence holder is recommended to take.
- 4 A number of matters have informed the Licensing Sub-Committee's decision.
- 5 First, the premises are situated in a residential area. They were historically a care home before becoming a guest house which was bought by the premises licence holder in 2005.
- 6 The rear garden is a compact area relative to the size of the overall property. The garden adjoins 3 residential gardens of properties on Salisbury Road to the rear, and others which are close to it. Significantly, Melford House and its garden are elevated above the houses and gardens to the rear in Salisbury Road, and this appears to have allowed noise from the garden area and the premises to transfer easily to those neighbouring properties.
- 7 Given the character of the area and the proximity of residential properties with gardens at a lower level to the rear, Environmental Health's view is that the external area is not suitable for use as a pub garden. That is, it is not suitable as an area for the consumption of alcohol by customers who have

bought alcohol from the premises as part of a commercial operation. The Licensing Sub-Committee agrees with this view.

- 8 Secondly, the licensing history of the premises and the process by which the premises licence holder has come to use the garden for the consumption of alcohol is relevant. The premises licence was granted in 2017. The Decision Notice records that the premises licence holder stated that the application was not seeking to use the garden for the consumption of alcohol, which would be confined to the buildings. He also stated that the Bed & Breakfast had a largely professional clientele and that the guests valued the peace and quiet.
- 9 In granting the licence for on-sales only, the Licensing Sub-Committee considered the potential impact of noise generally on the occupiers of neighbouring properties, from people going outside to smoke or the leakage of sound on entering or leaving buildings when noisy activities were taking place. It was noted that the application was for consumption on the premises only, and that consumption off the premises was not part of the application. The view of the premises licence holder, that consuming alcohol was not a licensable activity, was also recorded in the Decision Notice. For those reasons, the Licensing Sub-Committee considered that a condition preventing the consumption of alcohol in the external areas would address the reasonable concern of local residents.
- 10 The Licensing Sub-Committee consider that the following points can be taken from that Decision Notice:
 - (1) The premises licence holder made clear that he had no intention for guests to consume alcohol in the garden, but at the same time giving his view that consuming alcohol in the external areas was not a licensable activity, thereby suggesting that it could happen.
 - (2) The Licensing Sub-Committee clearly had a concern that the use of the external areas would give rise to public nuisance.
 - (3) The Licensing Sub-Committee therefore put the issue beyond doubt by imposing Condition 2 on the licence, preventing the consumption of alcohol in the external areas.
- 11 The Licensing Sub-Committee agrees with the Licensing Authority's view that after the grant of the licence, the premises operated without significant issue until June 2021.
- 12 During the lockdowns associated with Covid-19, the premises licence holder applied for a minor variation of the premises licence. The reason for that application is recorded in the review application. It was so that he could sell ale etc. to local people for consumption at home. The basis of the application was accepted by officers in good faith. To that end, in order to

enable off sales to local people for consumption at home, the premises licence holder was also advised to vary the requirement that sales only be made to residents and bona fide guests by invitation only, to make clear that that condition only applied to sales for consumption on the premises. The minor variation took effect in May 2020.

- 13 Complaints started to arise from use of the garden for the consumption of alcohol from June 2021 (as lockdown restrictions for licensed premises were eased), and throughout that summer.
- 14 The background shows that, despite stating to the Council that he never intended for there to be consumption of alcohol in the garden area, and despite stating that the intention of his minor variation was to make off-sales for local people to consume alcohol at home, the premises licence holder used his minor variation to allow guests of the Bed & Breakfast and members of the public to consume alcohol in the garden area of the premises.
- 15 Further, any suggestion that this was a temporary measure during the pandemic is dispelled by the premises licence holder's position at the hearing, that he wants to maintain use of the garden for the consumption of alcohol.
- 16 Thirdly, it is clear that the use of the external areas for the consumption of alcohol has undermined the prevention of public nuisance licensing objective. Public nuisance is not narrowly defined and has clearly been caused here to a number of residents in the area from different households (SoS's Guidance, para. 2.16).
- 17 The Licensing Sub-Committee considers that there is clear and cogent evidence of public nuisance during the summer of 2021, after the minor variation had been granted and lockdown restrictions relaxed. The Licensing Sub-Committee attaches weight to the thrust of the written representations on this point. It attaches more weight to contemporaneous diary records of certain of the residents. The detailed and specific evidence of public nuisance given by the residents who attended the hearing, and its effect on them, carries significant weight. That evidence is corroborated by the evidence of the Licensing Authority, whose officers had attended the site. It is also corroborated by the evidence of Environmental Health officers who attended and observed the statutory nuisance on two occasions in August 2021.
- 18 The Licensing Sub-Committee was also shown video footage taken from the garden of a resident's property on Salisbury Road directly adjoining the garden of the premises. The footage was taken across a number of days in the summer of 2021, and at different times of day. The level of noise should be treated with caution, given the difficulties in replicating what the noise

would actually have sounded like from the resident's garden. However, overall, the noise evidence on the video footage is consistent with the other sources of evidence above.

- 19 The character of the noise from that footage is consistent with that of a pub garden, with chatter, raised voices, occasional shouting, and some singing / chanting, by groups of people (on one occasion music is played despite the fact that the licence does not allow regulated entertainment). The frequency of such noise and its nature, caused by groups of people drinking alcohol, is consistent with a commercial pub garden operation, taking place in the summer months, when residents can reasonably expect to enjoy their gardens. The regular frequency and intensity of the noise, and its character, cannot be explained away by reference to days when the European Football Championship took place (a one off tournament) or to occasional parties which any household might have in their garden.
- 20 Notably, several of the representations made in support of the premises, refer to it as having a pub garden, which is consistent with all of the evidence above. The premises are also supported by CAMRA and have an entry in the good pub guide. Importantly, the public nuisance here has been verified by officers at the Council and focuses on the very concern – use of the garden for the consumption of alcohol - which officers and the public raised when the licence was granted.
- 21 Fourthly, the response of the premises licence holder reveals a lack of understanding as to how the licensing regime works, and does not instil confidence in his ability to manage noise from the premises.
- 22 When officers raised the noise issues with the premises licence holder, his response was to claim that residents had a vendetta against him and that they were exaggerating. When Environmental Health officers verified the statutory nuisance, his response was to criticize officers' approach, to escalate matters to a more senior officer, and to argue that officers were in some way biased. Taken together with the series of legalistic points made in response to the application (which are without foundation - see below), the premises licence holder's response does not show that he has taken a proactive partnership approach to dealing with the issues.
- 23 Significantly, having heard from officers and the residents at the hearing - at a point when the premises licence holder appeared to show a degree of insight into the effect that the operation of his premises was having on others - he was asked by the Licensing Sub-Committee what steps he would be prepared to take to manage noise nuisance moving forward.
- 24 His response was that if any complaint was made to him, he would ask people in the garden to go inside. He also stated that

he would ask guests to sit in the garden in silence.

- 25 These answers revealed a startling lack of understanding of noise management at licensed premises. It is simply not credible to expect that a group of customers drinking alcohol in the garden of a premises could simply be told to stop and move inside at any stage, and that they would readily comply. It is also a reactive approach to the issue reliant on residents complaining on each occasion. Further, it is simply not realistic to expect customers to sit in silence in the garden of a licensed premises whilst drinking alcohol.
- 26 What the premises licence holder has not done is to seek to engage with each of the residents at an early stage to understand their concerns. He has not sought to make the application which officers discussed with him, instead arguing that he was forced to agree to make it. Even if he was not happy with its terms, he could have sought a different minor variation or a full variation. He has not sought to work up any noise management plan in conjunction with officers. The premises licence holder's response to the public nuisance and the application does not instil confidence in his ability to manage noise from the premises.
- 27 For all of the above reasons, the Licensing Sub-Committee consider that it is appropriate and proportionate to modify and add to the conditions in line with the review application. The effect of those conditions will be to make it clear beyond doubt that alcohol cannot be consumed in the external areas of the premises. At the same time, the conditions also provide a limit on the numbers of people allowed inside the premises in addition to the Bed & Breakfast guests. This is in part to ensure that the premises operate as a Bed & Breakfast with ancillary alcohol sales (which was the intention of the original licence), and not as a pub with ancillary accommodation. It also in part allows for noise which could be caused by large numbers of customers spilling outside the buildings, and / or causing noise inside, to be regulated.
- 28 Although called for by some residents, the Licensing Sub-Committee did not consider it appropriate and proportionate to revoke the licence. The premises clearly was able to operate before the pandemic as a Bed & Breakfast with a premises licence for on sales and consumption within the buildings. It did so without significant complaint. The conditions are targeted at ensuring the premises operates as it did before, making clear that there shall be no consumption of alcohol in the external areas.
- 29 It is also not considered appropriate and proportionate to impose a doors and windows condition on the licence given the nature of the premises (and the difficulty / cost of installing air conditioning). Again, the premises appears to have operated before the pandemic without causing significant issue with

regard to noise from inside the buildings.

- 30 Finally, the detrimental financial impact of modifying and adding to the conditions on the licence has been considered (SoS's Guidance, para. 11.23). The steps taken are proportionate and appropriate to the licensing objective of the prevention of public nuisance. The effect is only to seek the premises to operate as it did before the pandemic, in circumstances where the premises licence holder never intended to use the external areas for the consumption of alcohol, and stated that the minor variation was to allow sales to local residents to consume alcohol at home.
- 31 It is hoped that the hearing before the Licensing Sub-Committee, and this decision, will allow the premises licence holder and residents to reflect and work together so that the premises can operate successfully in line with the restrictions imposed.

In coming to its decision, the Sub Committee has taken into account:

- 32 Section 52(3) of the Licensing Act 2003 states that, having regard to the application and any relevant representations, it must take such steps as mentioned in s.52(4) (if any) as it considers appropriate for the promotion of the licensing objectives.
- 33 Rushmoor Borough Council's Statement of Licensing Policy and Guidance version 2 (2018), particularly, para. 3.12 (General Licensing Principles), which states that the licensing authority will be objective in its determination, consider the promotion of the licensing objectives and focus on matters that are within the control of individual applicants, the premises where licensable activities are to be provided and the area in the vicinity of the premises concerned. Paragraphs referred to in Appendix F, Table 2 of the Agenda. Further references below.
- 34 The Secretary of State's Guidance issued under section 182 of the Licensing Act 2003, particularly, paragraphs 9.3 (licensing authority's discretion engaged when relevant representations are made), 9.4 – 9.10 (relevant, vexatious and frivolous representations), 9.42 - 9.44 (determining actions that are appropriate for the licensing objectives), and Chapter 11 on reviews. Paragraphs referred to in Appendix F, Table 1 of the Agenda. Further references below.
- 35 The legal and other arguments raised by the premises licence holder (taken in turn below, as relevant):

"The Garden Area Location and Character"

36 The proximity of Farnborough airport and aircraft movements associated with its use has been taken into account by the Licensing Sub-Committee. However, the Committee accepted the context provided by Environmental Health at the hearing, in particular that (1) the premises are located outside of the 55dB noise contour for the airport, indicating that aircraft noise is less likely to be a significant issue in this location, and (2) that noise from aircraft is of a different character – and less disruptive - to the noise which causes a nuisance here, which is from human voices in the rear garden of the premises next to neighbouring premises. The allegation of unfair bias against the out of hours officer is without foundation.

“Current Licence Conditions”

37 The premises licence holder argues that Condition 2 on the premises licence, which prevents the consumption of alcohol in the external areas of the premises, is unlawful.

38 It is noted that the premises licence holder did not appeal against the imposition of that condition when the licence was granted in 2017, as he was entitled to do if he felt the condition was unlawful. Moreover, at the time when the licence was granted, he stated that he was not seeking to use the garden for the consumption of alcohol, and that the consumption of alcohol would be confined to the buildings. This was noted in the Council’s Decision Notice. The condition was imposed so as to address any concern that noise, drunk or anti-social members of the public would be attracted to the premises.

39 The Licensing Sub-Committee consider that the condition is lawful. The Secretary of State’s Guidance at paragraph 8.36 provides that it is not normally necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence, and that if the garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises (para. 8.37). However, the condition was appropriate here for the prevention of public nuisance, given the clear statement of the premises licence holder at the time, and the likelihood of public nuisance if the garden was used for the consumption of alcohol. There is nothing in the Secretary of State’s Guidance which prevents this sort of condition, where public nuisance is a concern.

“Responsibilities and Limitations of the Licensing Authority”

40 The premises licence holder refers to s.21 of the Legislative and Regulatory Reform Act 2006 (in exercising a regulatory function to which the section applies, any person must have regard to the principles of carrying out regulatory activities in a way which is transparent, accountable, proportionate, and consistent). The Regulator’s Code was published under the 2006 Act. The Council’s Corporate sanctions and enforcement

policy refers to and has regard to the Regulator's Code and the 2006 Act.

- 41 The premises licence holder refers to paragraph 2.14 of the Council's Statement of Licensing Policy (Other documents and references), which states that, where appropriate, the policy should be read in conjunction with the documents listed. The premises licence holder states that he has not been able to find any published policy document relating to enforcement and compliance policy from that list. However, the Council's Corporate sanctions and enforcement policy is published and readily available by searching online, as well as through searching the Council's website. In his Addendum, the premises licence holder accepts that he has now received this policy. There is no breach of law by failing to have hyperlinks to it in the Council's Statement of Licensing Policy.
- 42 There is nothing to suggest that the enforcement policy is out of date. The review application sets out the steps which were taken to engage with the premises licence holder, including discussing the noise issues and operation of the premises with the premises licence holder, investigating the credibility of the noise complaints by engaging Environmental Health, engaging with him in correspondence, and meeting him on 7 October 2021 to discuss the issues. A number of opportunities were given for the premises licence holder to make the minor variation application which had been discussed with him, and that he had agreed to make. The Licensing Sub-Committee considers that this engagement was fully in line with the partnership approach to licensing and the Council's enforcement policy.
- 43 Importantly, the general principles of enforcement, including proportionality, consistency, openness and accountability, supporting economic progress etc. have been complied with in the actions of the Licensing Authority and Environmental Control and Pollution Team, and in this decision. The Licensing Authority's expectations have been communicated through the Statement of Licensing Policy and its Corporate sanctions and enforcement policy. The way in which noise complaints were dealt with by the Council was also made sufficiently clear to the premises licence holder through their interactions with him.

"Circumventing Environmental Health Legislation"

- 44 The premises licence holder refers to the Environmental Protection Act 1990 as the underlying legislation for the licensing objective of the prevention of public nuisance. This is wrong as a matter of law. Part 3 of the Environmental Protection Act 1990 provides for a separate statutory regime dealing with Statutory Nuisance and Clean Air. It does not provide the underlying legislation for the public nuisance licensing objective. Paragraph 1.19 of the Secretary of State's Guidance provides that licence conditions should not duplicate

other statutory provisions and that licensing authorities should be mindful of requirements and responsibilities placed on them by other legislation. The Environmental Protection Act 1990 is listed in that context. Whilst the Licensing Sub-Committee is mindful of its provisions, the conditions imposed here do not duplicate the 1990 Act. Moreover, the conditions imposed here are fully supported by the Council's Environmental Control and Pollution Team. For the same reasons, the Licensing Authority is not overriding the "underlying" Environmental Health legislation.

45 Importantly, the internal process adopted by the Licensing Authority and Environmental Control and Pollution Team to deal with noise complaints was not unlawful, and the premises licence holder was not prejudiced by its use in this case. The approach to noise complaints is explained in the review application and was explained further at the hearing:

- The change in the way in which noise complaints were dealt with came about because of feedback from licensed premises that they were having to deal with the Licensing Authority and Environmental Health on multiple visits relating to the same noise issue.
- As a result of that feedback, complaints about noise at licensed premises are now initially dealt with by the Licensing Authority who carry out the initial investigation. This is because there are often conditions placed on a premises licence to reduce the likelihood of noise complaints, and the Licensing Authority are best placed to deal with those breaches.
- Insofar as the noise complaints which the Licensing Authority are dealing with go beyond the remit of licensing, Environmental Health would take forward the investigation.
- As part of that process, the wording of letters / recommendations are agreed with the Environmental Health.

46 In this case, officers from Environmental Health were copied in on all correspondence. They were also involved in meetings. Given that the noise complaints related to licensed premises, Ms. Bowman from the Licensing Authority was the main point of contact.

47 In this case, because at an early stage the premises licence holder had raised concerns as to the credibility of the complaints, noise complaint numbers had been issued which allowed for officers from Environmental Health to assess the complaints to verify the noise. Statutory noise nuisance affecting the reasonable use of the houses and gardens of neighbouring residents was observed by 2 separate officers

from Environmental Health on 25 and 29 August 2021.

- 48 Having considered the position, both departments decided that the Licensing Authority was the most appropriate body to take steps to deal with the noise issue because the issue involved licensed premises and the prevention of public nuisance licensing objective applied.
- 49 Through their correspondence and visits, both the Licensing Authority and Environmental Health had tried to work with the premises licence holder to agree amended conditions which were enforceable.
- 50 There is nothing unlawful in adopting the above process as a means of handling noise complaints. Moreover, there is nothing to suggest that the premises licence holder was prejudiced by the approach taken. The premises licence holder suggested that he was unable to have meaningful discussion with officers from Environmental Health. However, given that (1) the Licensing Team discussed the issues with officers from Environmental Health following the above process, (2) Environmental Health officers were copied in on correspondence, and (3) Environmental Health made a representation which sought precisely the same outcome as the review application, there is nothing to suggest that there was any lack of engagement in the process by Environmental Health, or that further discussion with Environmental Health would have made any difference here.
- 51 Accordingly, there was no circumventing of Environmental Health legislation. It is not unlawful for the approach to dealing with noise complaints not to be written down. This was an internal procedure which was based on providing a proportionate and efficient process under which there would be a joined up approach to the investigation of noise complaints on licensed premises with a view to saving expense and providing a single point of contact. It did not undermine the proper approach to enforcement under the Licensing Act 2003 nor the Environmental Protection Act 1990.
- 52 At the hearing, the premises licence holder made reference to the Secretary of State's Guidance on this issue. The Guidance states that nothing in the Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (para. 1.10). However, the internal process followed by the Licensing Authority and Environmental Health does not have the effect of overriding any other legislation. The Guidance also states that it is reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority (para. 11.5). There is nothing in the Guidance which states that the Licensing Authority cannot bring a review application in these circumstances. Here, where Environmental Health was fully involved in and supportive of the approach

taken pursuant to the internal procedure for dealing with noise complaints on licensed premises, there was nothing unlawful in the approach taken and there was no conflict with the Guidance.

“Duty to act fairly and impartially”

- 53 The premises licence holder argues that the Licensing Authority has not acted fairly or impartially because there was a delay between the unannounced visit of 30 July 2021 and the provision of some information requested by the premises licence holder (7-8 weeks later), at which point it was too late for him to take any remedial action because the Licensing Authority had collected evidence which was used to try and amend the licence.
- 54 There is no substance to this argument. The Licensing Authority fairly accepted that there was some delay in providing information to the premises licence holder due to holidays taken around that time. However, even after a response was made to the premises licence holder’s questions on 23 September 2021, there was a period of over 4.5 months for the premises licence holder to take steps to prevent public nuisance and demonstrate to the Licensing Authority that they would be effective, before the review application was made on 16 February 2022. That opportunity was not taken up by the premises licence holder.

“Imposition of Licensing Conditions”

- 55 The premises licence holder argues that there is no underlying legislation which supports the lawfulness of imposing licence restrictions, and that there should be a light touch to the imposition of licence conditions, to avoid creating legislation. This reveals a misunderstanding of the law.
- 56 The Licensing Act 2003 provides the underlying legislation here. Section 52(4)(a) provides for the modification of conditions if the Licensing Sub-Committee considers it appropriate for the promotion of the licensing objectives (in this case the prevention of public nuisance). The remedial action taken is no more than appropriate and proportionate to address the causes of concern that instigated the review (SoS’s Guidance, para. 11.20), namely noise nuisance caused by the use of the external areas for the consumption of alcohol. The impact on the viability of the business alleged by the premises licence holder is noted, but the steps taken are nonetheless considered to be appropriate and proportionate for the promotion of the licensing objectives. The premises were able to operate viably before the lockdowns caused by Covid-19, when they allowed for on-sales only, and no consumption of alcohol was allowed to take place in the external areas. There is nothing to suggest that the premises could not operate viably with the amended conditions in place, as they did before, given

the relaxation of Covid-19 restrictions.

- 57 Neither the *Canterbury* case nor the *Hope and Glory* case referred to by the premises licence holder take matters further. The *Canterbury* case involved the lawfulness of that council's cumulative impact policy. The *Hope and Glory* case involved the proper approach to council decisions on appeal. There is nothing in those judgments which is of direct relevance to the issues here, or that is binding on these issues.
- 58 Whilst a light touch approach to applications for new premises licences and variations is generally advocated, the review process provides a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence (SoS's Guidance, para. 11.1). The modification of conditions following a review process does not amount to creating legislation.

"Rushmoor Council Licensing Case for Public Nuisance"

- 59 The premises licence holder refers to evidence of his wet sales on the days on which a statutory nuisance was observed by officers, and also argues that no decibel readings were provided in circumstances where noise from children would be expected from any residential garden and the noise would not have been anything like that experienced from other licensed premises.
- 60 However, the assessment of statutory nuisance is essentially a subjective assessment. Decibel readings are not required to make such an assessment. The level of wet sales may simply indicate that the statutory nuisance was caused by a smaller number of people, not that it did not occur. The facts and circumstances, including the level of noise which might be expected, on an occasional basis, from residential premises, would have been taken into account by officers when they attended. Against that background, officers came to the view that there had been an unreasonable interference with the use of residential premises including their gardens.
- 61 The letter dated 30 March 2022 from an Environmental Protection Officer of Buckinghamshire Council is noted. Little weight is given to its contents. It is not clear in what capacity Mr. Griffin has made his comments. In any event, his comments mainly relate to points which he considers it would be interesting to explore, and there is nothing in the letter which materially undermines the judgments of the officers who observed a statutory nuisance on two occasions in August 2021.

"Effects of the Pandemic"

- 62 The premises licence holder explains that his risk assessment during the pandemic included drinking outside and that the

noise that occurred during the pandemic was of a temporary nature.

- 63 However, the Licensing Authority explained that the premises licence holder applied for a minor variation of his licence on the basis that this would allow off-sales to residents in their homes, but then made use of that amendment to the licence to allow alcohol to be consumed in the garden area. The Licensing Sub-Committee's decision ensures that the premises will operate as it did before the pandemic.

"Noise complaint timeline 2021"

- 64 This has been taken into account in the Licensing Sub Committee's decision. It is understandable that residents may not have felt able to approach the premises licence holder. When noise issues were raised by officers, his response was to dismiss their complaints as not genuine or exaggerated, and that they were part of a hate campaign.
- 65 Finally, all the written representations and oral evidence presented at the hearing have been taken into account, including the additional papers submitted just before the hearing and circulated.

In coming to its decision, the Sub Committee has NOT taken into account:

- 66 Matters relating to the planning regime. Queries raised about planning matters are separate matters to be considered under that regime. Paragraph 3.46 of the Secretary of State's Guidance advises that the planning and licensing regimes are separate involving different (albeit sometimes related) matters. To ensure a clear separation of planning and licensing, applications will be considered wholly independently of planning applications. That part of the Guidance has been applied here.
- 67 Matters relating to the "hate campaign" (including the fence line). The premises licence holder referred to a hate campaign by residents against him. Certain residents responded to the effect that this was a mechanism used by the premises licence holder to play the victim, avoid his responsibilities, and blame others.
- 68 The Licensing Sub-Committee does not find it helpful to make findings on this part of the discussion, apart from as follows. The evidence relating to public nuisance is detailed, frequent across the summer months of 2021, and comes from a number of different sources (residents' written and oral representations, contemporaneous diary sheets, video footage, evidence from Environmental Health (including 2 findings of statutory nuisance), evidence from Licensing Authority officers). There is more than sufficient credible evidence that the use of the garden area of the premises for the consumption of alcohol has

undermined the public nuisance licensing objective, and the Licensing Sub-Committee's judgment is that it is appropriate and proportionate to modify the conditions to remedy that issue.

69 The noise complaint of 2019. This was pre-pandemic and before the minor variation to the premises licence and use of the garden.

70 The fact that plans have been submitted for a mixed-use scheme including a 190 bed hotel is irrelevant to this review application. The potential for planning permission to be granted for a business which might compete with that of the premises licence holder is entirely irrelevant to the licensing objectives, as is the suggestion that it might cause noise. The promotion of the licensing objectives must be considered on the situation as it is now not on the basis of future planning permissions.

Final points and appeal rights

71 Interested Parties and Responsible Authorities should be aware of the power to apply for a review of the licence in the future should there be any concerns about the operation of the licence.

72 The Applicant is reminded that failure to comply with a condition is a criminal offence.

73 Finally, all parties have a right of Appeal to the Magistrates' Court within 21 days of the date of this decision notice.

OTHER CONDITIONS (New, amended and deleted conditions consistent with the operating schedule)

- Modify Condition 1 of Annex 3 of the premises licence, so that it reads:

'At any time that licensable activities are taking place at the premises, there shall be no more than 6 people present who are not residing there or bona fide guests of patrons residing at the guesthouse. Non-residents shall be permitted entry by prior booking only.'

- Modify Condition 2 of Annex 3 of the premises licence (and attach the plan at Pg 33 of the Agenda Pack, which makes clear the red line boundary of the licensed premises and the external areas) so that it reads:

'No alcohol shall be consumed in the external areas of the premises (identified in blue on the attached plan). Prominent, clear and legible notices shall be displayed at all exits and

external areas to notify patrons of this.'

- Add the following conditions:

- (1) *Prominent, clear and legible notices shall be displayed at all exits and external areas requesting patrons and staff keep noise levels to a minimum in external areas.*
- (2) *Procedures for responding to noise complaints shall be established. Written records of noise complaints and action taken in response shall be kept and made available to officers of Rushmoor Borough Council when requested.*
- (3) *No pre-advertised events shall take place at the premises at any time when it is open for licensable activities.*

INFORMATIVES (non-binding)

- (a) As to Condition 1 of Annex 3 as amended, it is recommended that a written record of all non-residents visiting the premises is kept at the premises, and made available to officers when requested.
- (b) It is recommended that a noise management plan is worked up in conjunction with officers of the Council, which would form part of the procedures referred to in additional condition (2) above.
- (c) It is recommended that steps are taken to minimise any light pollution emanating from the premises.
- (d) It is recommended that regular communication is maintained with residents in the area to understand and respond to any potential concerns as to the operation of the premises.
- (e) For the sake of completeness, it should be noted that although noise complaints should, if possible, be made to the premises licence holder, they can also continue to be made to the Council.