

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Licensing and Gambling Acts Sub Committee

14th November 2022

Report of the Head of Legal Services – Craig Griffiths

Matter for Decision

Wards Affected: Pontardawe

Application for the Review of a Premises Licence

Purpose of the Report

1. To consider an application by Environmental Health for the review of the premises licence for the Other Place (Live Lounge)

Premises Name	Other Place (Live Lounge)
Premises Address	9 Ynysderw Road, Pontardawe, Swansea SA8 4EG
Applicant Name	Rachel Matthews - Environmental Health Officer
Applicant Address	Environmental Health, Neath Port Talbot Council, The Quays, Brunel Way, Neath SA11 2GG

Premises Licence Holder Name	HD Pub Investments Ltd
Designated Premises Supervisor	Mr Hans Andrei Dionisio Erive

Executive Summary

2. This is an application under the Licensing Act 2003 for a review of a licensed premises for the Other Place (Live Lounge).
3. The application for review has been submitted by Environmental Health on the grounds of the prevention of public nuisance.
4. Additional representations were received from Legal Regulatory Services (Licensing), South Wales Police and several residents.

Background

5. At any stage following the grant of a premises licence, a responsible authority may ask the licensing authority to review the licence because of a matter(s) arising at the premises in connection with any of the four licensing objectives.
6. When a licensing authority receives an application for a review from a responsible authority, it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations.
7. Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
 - modify the conditions of the licence (which includes adding new conditions or any alteration or omission of an existing condition);
 - to exclude a licensable activity from the scope of the licence;
 - to remove the designated premises supervisor;

- to suspend the licence for a period not exceeding three months.
- To revoke the licence.

Grounds for Review

8. The Environmental Health Section of Neath Port Talbot Council wish to make an application to review the Premises Licence for Live Lounge 9 Ynysderw Road Pontardawe SA9 4EG (Premises Licence Number: PREM-0322).
9. The Environmental Health review application primarily focuses on the failure to promote 'The Prevention of Public Nuisance' Licensing Objective.
10. The decision to make the review application has not been taken lightly; but it is felt that this is the only remaining option to achieve compliance, and attain ongoing protection for the local residents from excessive noise arising from activities at, and in the vicinity of the licensed premises: causing Public Nuisance.
11. Issues in relation to the premises have been ongoing for a number of years. Several attempts to resolve concerns amicably with the licence holders but these have failed, and Abatement Notices has been served due to the ongoing regular nuisance emanating from the premises. Environmental Health Officers have attempted to work with the premises to reach a solution that suits all parties.
12. The Premises License Holders (PLH) are HD Pub Investments Ltd and are the registered owners of the premises with The Land Registry. The management of the premises is overseen by Hans Andrei Dionisio Erive; as the Designated Premises Supervisor (DPS) and Andrew Davies; the Manager.
13. Noise Abatement Notices have been served on the (PLH), (DPS) and Andrew Davies, on 15th September 2022.
14. Having reviewed the history of complaints in relation to the premises; initially there has been a pattern of short term compliance following Local Authority intervention, but complaints would be received again. The management controls that are in place are inadequate for the type of entertainment they are providing in a building that is not suitably

constructed to contain electronically amplified rock music, played at high volume.

15. The building was formerly the Royal British Legion Club. The entertainment provided in these types of premises is historically darts, dominoes, bingo, a party for a special occasion: Mostly low volume activities that do not require the building to be suitably constructed for sound attenuation.
16. The community Facebook Page has shown there to be a section of the community who are not sympathetic to the residents who are being affected. A number of comments have been made along the lines of: if you don't want the noise of a pub; don't buy a house next to a pub. It must be considered however; that many of the residents living in Ynysderw Road and Francis Street have lived in their homes a long time, e.g. 30 and 40 years before the premises became a live music venue. The premises has evolved into a venue that is unsuited to the location; surrounded on 2 sides by residential premises in extremely close proximity.
17. Complaints in 2021 regarding noise from the premises commenced almost as soon as the premises opened and Premises Licence Holder after Covid restrictions within the hospitality sector were relaxed. Environmental Health received complaints of excessive noise from music emanating from the premises.
18. An application was made by the (PLH) for a minor variation for the provision of an outdoor bar and entertainment on the car park. Objections were made due to Environmental Health Officer having concern for Public Nuisance to be caused.
19. An announced visit to the premises was made by Environmental Health, Licensing and Police Licensing on the 15th July 2021 to discuss the application for the variation of the Premises Licence, noise complaints and Covid controls. The premises was represented by Robert Megson. During this visit Rachel Matthews of The Environmental Health Team, discussed that music levels needed to be to be quieter due to the location of the pub in a residential area.
20. Mr Megson explained that he had carried out work to sound proof the rear function room, by having ceiling tiles, triple glazing to the right hand side of the function room, and had sealed gaps in the structure of the building. Unfortunately the specifications of the sound reduction of these materials

was unknown. The remaining left hand side of the function room with the windows facing Francis Street, and diagonally across to Ynysderw Road; does not have triple glazed windows. There are also a significant amount of areas in the construction of the building that allow the noise inside to escape, adversely affecting the residents.

21. In addition; Rachel Matthews advised that there were concerns over the disturbance caused by the presence of people outside the premises, until late, i.e. 01.00hours.
22. HD Pub Investments Ltd, the (DPS) and the Manager have been notified on several occasions of the public nuisance that is emanating from, and in the vicinity of; the Live Lounge premises.
23. Letters were sent in October 2021 and November 2021 and again in March 2022 advising that complaints continue.
24. A meeting on 5th May was held with representatives of the premises: the (DPS) Hans Erive Dionsio and Andrew Davies with Environmental Health Officers: Gareth Liley and Rachel Matthews. Mr Liley advised the representatives that the control measures that they stated they were carrying out: measuring with a sound meter, installation of ceiling tiles, foam filler, triple glazed windows to the right hand side of the function room were insufficient to prevent a nuisance.
25. Documents with specifications of sound reduction of the materials used were unavailable and the management controls proposed such as; use of the hand held sound level meter were being misunderstood. In addition the sound level meter was not of the scientific grade and was not calibrated by an accredited laboratory.
26. The representatives were advised that they needed to have the premises assessed by an Acoustic Consultant, registered with the Institute of Acoustics, and any assessment to be carried out was to be approved with the Environmental Health Department.
27. The representatives were advised that until this had been successfully completed; they should not continue to provide music entertainment that causes a nuisance.
28. Complaints about disturbance from loud music have continued, as well as complaints about patrons causing late night disturbance.

29. In addition to the meetings with company representatives: Letters and emails have been written to the PLH, and the DPS advising them of these complaints and that monitoring results will contribute to consideration of enforcement action:

8th November 2021

21st March 2022

26th May

14th June

7th July

18th July

5th August

2nd September

30. In response to this situation; Environmental Health Officers have carried out a noise monitoring programme, to ascertain if the complaints are valid. Witness statements from 6 Environmental Health Officers have reported that a public nuisance has been caused emanating from these premises. The Officers were deployed over the spring and summer months and have reported that nuisance occurred on approximately 7 occasions. The nuisance is comprised of excessively loud electronically amplified music, usually with drums, electric guitars and singing, and usually lasts for approximately 2 hours. The Officers have not been present for all events, due to staffing issues, but on those occasions where they have been present; nuisance has been witnessed. Making the primary concern for The Environmental Health Team being repeated, excessively loud music emanating from the premises; this relates to indoor and outdoor music, on any day from Friday or Saturday night to Sunday afternoon/ evening:

31. Officers of the Environmental Health Team have provided witness statements that evidence nuisance being caused on: (dates)

8th April 2022

20th May 2022

16th July 2022

26th August 2022

28th August 2022

2nd September 2022

10th September 2022

32. The event on the 28th August 2022 took place in the beer garden of the premises and was excessively loud. The band playing had speakers facing towards the boundary with Ynysderw Road, which is a breach of the licence condition 12. A photograph of the set-up was taken.
33. It is the opinion of the Officers of The Environmental Health Team that the structure and location of this premises is not suitable for the type of entertainment the licensee wishes to provide. Due to the fact that the premises is surrounded on two sides by residential properties the closest being approximately 4m from the boundary of the premises. I understand that the inhabitants of this house purchased the land from the pub to make a driveway.
34. When considering the combination of: the poor sound attenuation of the structure of the building; the inadequate controls that management have implemented; the poor attitude shown towards the advice and recommendations, and the continuing noise nuisance that the premises is causing: the Officers have reached the conclusion that the premises is not suitable, or appropriate for live or recorded music to be provided in this manner. The managers or supervisors at the premises have demonstrated that they are unable to provide such entertainment; without giving rise to complaints, and more significantly, officers of the department have witnessed the excessive noise in person, on several occasions.
35. Local residents have advised that the patrons of the premises are causing noise disturbance outside the premises after 23:00 hours, the premises has licensed hours of 01:00hours for service of alcohol with closing at 01.30hours. Patrons are likely to have a substantial amount of alcohol during a "night out" that finishes at this hour, and as a result their behaviour and voices are likely to be less controlled than they would usually be, if they were not under the influence of alcohol, it is known that alcohol relaxes the inhibitions. As a result; some residents report that

there are often people hanging round outside shouting and talking loudly, causing them to be woken late at night, beyond the night-time hours cut off point of 23;00 hours.

36. In addition to this; residents have reported that patrons are granted entry after 23.00 hours. In breach of the licence condition.
37. There are concerns from numerous local residents that foot traffic between the licensed premises in the area is causing late night disturbance with residents regularly being woken by intoxicated persons travelling between the venues.
38. Pontardawe is described by the Town Council as a rural town. The town centre is very small, with Herbert Street and High Street being the main Central Business District. There are 7 licensed premises concentrated in a small area, mostly with a late licensed hour of 01.00 hours, closing at 01.30 hours. This is particularly significant, due to the fact that residential premises are in immediate proximity to these licensed premises. The town centre is not removed from residential premises, like other town centres near-by, such as Swansea and Neath, due to the fact that Pontardawe is so small.
39. Traditionally the pubs in Pontardawe that are woven into the residential community would not have been live music venues, with late licenses of 01:00-01:30. Pontardawe has a significantly high percentage of older residents and working families; who do not benefit from the disturbance caused by the disturbance brought in by the night-time economy.
40. In the opinion of Officers of the Environmental Health Team consideration must be given to the fact that having 7 licensed premises permitted to remain open until 01:30am, in a small rural town; will cause there to be intrusive and unacceptable late night disturbance and public nuisance.
41. Taking all the information into consideration, Officers of the Environmental Health Section, make the following recommendations:
42. Condition 1

By virtue of S177 (A) the Licensing Act 2003 the conditions of the Premises Licence relating to regulated entertainment shall be in force between 8.00 hours and 23.00 hours.

43. Condition 2

There shall be no external amplified sound in the external areas of the premises, including the beer garden and car park.

44. Condition 3

There shall be no regulated entertainment in the form of live or recorded music at the premises until such time that the licence holder and/or owner of the premises commissions an independent acoustic consultant to undertake a Noise Impact Assessment and the recommended control measures contained within the assessment are implemented. A copy of the Noise Impact Assessment along with supporting evidence that the requirements have been complied with shall be provided to the Local Authority for written approval prior to the commencement of regulated entertainment.

To comply with the above the following criteria must be met;

45. The report must be carried out by an acoustic consultant who shall be a member of the Association of Noise Consultants and a member of the Institute of Acoustics.

46. The methodology for the noise assessment shall accord with current UK guidance and British Standards and agreed with the Local Authority in advance of the assessment commencing.

47. Prior to implementation of the control measures the Local Authority shall be given the opportunity to review and comment on the Noise Impact Assessment and its recommendations.

48. Condition 4

Once this has been submitted and approved by the Officers in The Environmental Health Team: The Premises Licence Holder or a nominated person shall carry out proactive noise observations outside the premises at least once an hour during the provision of regulated entertainment, and take any necessary remedial action.

49. A written record of proactive external noise assessments and, where applicable, remedial actions taken shall be kept for a minimum of 31 days from the date of the last entry in the record and this record shall be available for inspection on demand by authorised council officers at all times the premises are open.

50. Condition 5

Once the Noise Impact Assessment has been submitted and approved by the Officers in The Environmental Health Team:

Speakers shall not be located in the entrance and exit of the premises, or outside the building.

51. Condition 6

Once the Noise Impact Assessment has been submitted and approved by the Officers in The Environmental Health Team:

All windows and external doors shall be kept closed at any time when regulated entertainment takes place, except for the immediate access and egress of persons.

52. Condition 7

The terminal hour for the sale and serving of alcohol at the premises shall be 23:00 with a 30 minute drinking up time.

The premises is to be cleared of all customers by 23:30.

53. Should the permitted hours for the serving of alcohol and closing the premises fail to allow the patrons to disperse in time for the night-time hours of 23:00 hours: the closing time of the premises should be reduced, due to the proximity of residential premises.

54. Condition 8

Once the Noise Impact Assessment has been submitted and approved by the Officers in The Environmental Health Team:

A Noise Management Plan shall be submitted for examination and approval by the Officers of the Local Authority. The management plan shall identify the sources of noise associated with these premises, and detail the controls to be implemented to reduce the noise to an acceptable level.

The control measures stipulated within the management plan shall be implemented at all times whilst the premises is operating.

Current Licence

55. Supply of Alcohol

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

56. Films

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

57. Live Music

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

New Year's Eve until 02.00

58. Recorded Music

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

New Year's Eve until 02.00

59. Indoor Sporting Events

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

60. Performance of Dance

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

New Year's Eve until 02.00

61. Anything of a Similar Description

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

New Year's Eve until 02.00

62. Making Music

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

63. Dancing

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

Facilities for dancing will be available on New Year's Eve until normal working hours on New Year's Day

64. Anything of a Similar Description

Sunday to Thursday: 08:00 - 23:00

Friday & Saturday: 08:00 - 01:00

65. Late Night Refreshment

Friday & Saturday: 23:00 - 01:00

Facilities for late night refreshment will be available on New Year's Eve until normal working hours on New Year's Day

Operating Schedule Conditions

66. Provide prominent signs throughout the premises and at all exits requesting patrons to leave in a quiet and orderly manner so as to minimise impact on local residents.
67. Ensure that all windows and doors are kept closed whilst amplified music is being played.
68. The Designated Premises Supervisor or a nominated responsible person must ensure that adequate provision has been made to enable, in the event of any emergency the safe evacuation of disabled as well as able bodied persons.
69. Provide a sound limitation device which is operational whenever amplified music is being played.
70. A documented procedure must be in place to verify the age of person who appear to be under eighteen years of age to prevent them gaining access to the premises and or purchasing alcohol. The means of verification should be restricted to:-
 - (1) Accredited Proof of Age Scheme's e.g Portman, Validate
 - (2) Photocard driving licence or passport.
71. The following entertainment is not permitted:-

Any live performance or live display of nudity, which is of such a nature that it must reasonably be assumed to be provided solely or principally for the purposes of sexually stimulating any member of the audience (whether by verbal or other means)
72. The licence holder may apply for a maximum of 12 special events per calendar year.
 - a) At least 10 days prior to the event, notification must be given to the Licensing Authority and the Police in writing.
 - b) Any police objection must be received by the Licence Holder before the end of the second working day following the day on which the notice was served. In the event of a police objection, the event shall not proceed.

- c) All conditions specified in Annex 1, 2 & 3 of the premises licence remain valid during special events.
- d) 9 of the special events referred to above will be permitted to last a maximum of 1 day (24 hours) and will be restricted to licensable activities indoors.
- e) 3 of the special events referred to above will be permitted to last a maximum of 5 consecutive days (120 hours) and will allow all licensable activities (except supply of alcohol) to take place in the outside areas i.e. beer garden, children's play area and car park. No live or recorded music will be permitted to take place in the outside areas between the hours of 11pm and 8am.

Conditions imposed at Committee

73. Only plastic glasses are to be used in the beer garden and the area will be supervised by staff .
74. Committee 16/08/2021
75. The outside bar (as identified on the plan attached to the licence) shall not be permitted to sell alcohol between the hours of 9:00pm and 7:59am;
76. Prominent signs will be erected in the outside beer garden, requesting patrons to keep noise levels to a minimum and leave in a quiet and orderly manner, so as to minimise impact on local residents;
77. A digital CCTV system shall be installed, or existing system maintained, at the Premises which will be operational at all times when the Premises is open to the public, and be capable of providing pictures of evidential quality in all lighting conditions, particularly facial identification. The CCTV recordings must be retained for a period of thirty one (31) days, and made available for viewing by the Police of an authorised officer of the Council on request:

The system must provide coverage of the following areas:

- i. The exterior perimeter of the Premises;
- ii. The entrance(s) and exit(s) of the Premises;
- iii. All public areas of the Premises (with the exception of the toilets).

78. Authorised officer recent data or footage with the absolute minimum of delay following a lawful request;
79. Every Friday and Saturday night, the Sunday night preceding any public holiday, Christmas Eve, Boxing Day and Good Friday, a minimum of two (2) SIA registered door supervisors will be on duty from 9:00pm until closing time;
80. At all other times, the Premises Licence Holder will risk assess the need for door supervisors and provide door supervision between such times and in such numbers as is required by the risk assessment. They shall also display their SIA licence in a reflective armband whilst on duty;
81. A daily register of security personnel will be maintained. The register shall show the name, address and licence number of each door supervisor, and the dates and times that they operate. The register must be kept available for inspection by the Police an authorised officer of the Council;
82. A Challenge 25 policy will apply and Proof of Age will be required from any person who appears to be under the age of 25 years who attempts to purchase or consume alcohol. This means of verification should be a form of identification which bears their photograph, date of birth, and a holographic mark and should be restricted to:
 - i. P.A.S.S. Accredited Proof of Age Schemes e.g. Citizen Card;
 - ii. Proof GB;
 - iii. Photo card driving licence or passport.
83. Premises to keep up to date records of staff training in respect of age related sales, in written or electronic format, available for inspection on request by any authorised officer of the Council or Police.
84. A log shall be kept, detailing all refused sales of alcohol. The log should include the date and time of the refused sale, and the name of the member of staff who refused the sale. The log shall be available for inspection at the Premises by the Police or an authorised officer of the Council at all times whilst the Premises is open.
85. The manager and/or staff shall manage the outdoor areas to ensure that customers of the Premises do not behave in a noisy, rowdy or offensive manner, and measures are put in place for staff to monitor the outdoor areas on a regular basis.

86. No speakers for amplification of music shall be placed on the outside of the Premises facing Ynysderw Road and Francis Street.
87. No entry or re-entry to the Premises after 11:00pm.
88. All customers exiting the Premises shall be encouraged to exit via the double gates.
89. The above representations are reproduced as Appendix 1.

Relevant Representations

90. Peter Malough - Legal Regulatory Officer NPTCBC
91. Nick Bailey - South Wales Police Licensing Officer
92. Kate Nicholson - 13 Ynysderw Road, Pontardawe
93. Andrew Nicholson - 4 Ynysderw Road, Pontardawe
94. Resident A1 - Email wish to be anonymous
95. Resident A2 - Email wish to be anonymous
96. Resident A3 Email wish to be anonymous
97. Resident A4 Email wish to be anonymous
98. John Howells - 16 Ynysderw Road, Pontardawe - Letter of support
99. Daniel Smith - Full address no provided - Letter of support

Officer Report

100. On the 15th September 2022, a review application and report was received from the Environmental Health Department in response to complaints from residents and previous enforcement action.
101. The application resulted in a number of additional representations being received both in support of the application for review and in support of the licence holder. These representations are attached at appendices 1-13.

Equality Impact Assessment

102. Not Applicable

Legal Impacts

103. There is a right of appeal against the Committee's decision to the Magistrates' Court

Risk Management

104. Not Applicable

Consultation

105. Consultation has been undertaken in accordance with the Licensing Act 2003.

Recommendation

106. That members determine the application after considering all relevant evidence.

Reasons for Proposed Decision

107. To ensure the licensing objectives as set out in the Licensing Act 2003 are promoted.

Implementation of Decision

108. The decision is for immediate implementation

Appendices

109. Appendix 1 - Review application and supporting Statement

110. Appendix 2 - Legal Regulatory Services Representation

111. Appendix 3 - South Wales Police Representation

112. Appendix 4 - Kate Nicholson Representation

- 113. Appendix 5 - Andrew Nicholson Representation
- 114. Appendix 6 - Resident A1 Representation
- 115. Appendix 7 - Resident A2 Representation
- 116. Appendix 8 - Resident A3 Representation
- 117. Appendix 9 - Resident A4 Representation
- 118. Appendix 10 - John Howells Letter of Support
- 119. Appendix 11 - Daniel Smith Letter of Support
- 120. Appendix 12 - Location plan of premises
- 121. Appendix 13 - Additional information provided by Environmental Health

List of Background Papers

- 122. Addition information summary of evidence from Environmental Health
- 123. Neath Port Talbot Licensing Policy
<https://www.npt.gov.uk/media/14952/licensing-act-2003-draft-licensing-policy-2021.pdf?v=20210923150929>
- 124. Secretary of State's Guidance
- 125. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

Officer Contact

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