

Wed 26/05/2021 13:30

Good afternoon,

Further to your consultation of the 30th April 2021 in respect of the above Full Premises Licence Variation Application, on behalf of a Responsible Authority (Environmental Health) I wish to raise an objection to the acceptance of this application on the basis of the proposed activities not being consistent with the licensing objective for the prevention of public nuisance.

The application proposes to:-

1. Change the name of the premises as shown on the premises licence to “The Fox – Pub & Kitchen”
2. Amend the licensing plan in accordance with drawing No. 2057 – 301 dated 4 March 2021 which accompanies the application and to permit the sale of alcohol from an external bar servery.
3. Add non-standard timing for all licensable activities and opening hours
4. Remove existing Annex 3 condition 1 and replace with new condition

The basis of my representation relates to the proposed changes to the layout consisting of the side car park being converted into an external seating area and the installation of a pre-fabricated timber kiosk in this area for use as an external bar servery and for this to be included within the licensed area (point 2 of the above proposals).

I have detailed my concerns in respect of the undue impact of noise disturbance and nuisance that I consider the above proposal will cause to nearby residents within an email of the 12 May 2021 to the applicant’s representative (copied within the email trail below). The potential issues that I raised are summarised as follows:

- The substantial size of the proposed extension to the beer garden and close proximity to neighbouring residential properties and their external amenity spaces
- The potential for nuisance noise from patrons and the impact this could have on local residents
- The receipt of complaints about noise from local residents since the area was utilised for outdoor seating in order to accommodate Covid-19 restrictions

- The intensification of the proposed customer use of the area in view of the proposed operation of an external bar server
- The need for the beer garden to not encroach too closely to the nearest residential properties
- The lack of any effective acoustic screening to the nearest properties and the need for this to be remedied
- The need for suitable restrictions and controls in relation to how the new beer garden is to be operated and managed

I would refer you to replies from the applicant's representative within the email trail below confirming that it has only been possible to agree the time at which customer use of the new beer garden shall cease and that all my other requests that have been made with a view to controlling the operational impact of the beer garden have been declined.

The proposed beer garden is a sizable area that could accommodate at least 60 seated customers with potentially more standing, directly in view of neighbours in close proximity. Customers will be naturally inclined to raise their voice when the area is busy and as they consume alcohol. Adjacent residents are likely to be subjected to intrusive noise, particularly at times when they would most want to enjoy their external areas during pleasant weather and at weekends. It is not likely that these residents would have suffered any significant impact from the previous use of the area as a car park.

As part of an investigation into residents' complaints of alleged statutory nuisance from customer noise associated with the current use of the car park as a beer garden, I installed automatic noise monitoring and recording equipment on 7th May 2021 within a habitable room to an adjacent residential property to monitor the received noise level and to enable audio recordings to be made of the noise being complained of.

The audio recordings clearly demonstrate the receipt of intrusive noise from the hubbub of customers' voices, often raised with laughter and shouts throughout the late afternoon and evening. The noise level of lively conversation was found to range between 47 and 50dB(A) with maximum levels of around 55dB(A) or more during louder shouts and laughter.

During a background recording taken whilst the equipment was being set up that afternoon, with comparatively little activity in the beer garden, noise levels ranged between 38 and 41dB(A). The difference in noise level is substantial in acoustic terms and, when factoring in the intrusive

character of the noise, has the potential to cause a clear nuisance impact.

It should be noted that such levels were measured within a habitable room with a side door open for ventilation and that noise levels within the external amenity spaces would be significantly higher. The resident who operated the equipment also commented at 20:38 that approximately 7 tables were in use out of a possible 19.

The findings of the monitoring exercise clearly demonstrate the likely impact from the proposal and justify the request for an acoustic screen to be installed along the boundary to protect the closest residents from excessive noise ingress to their homes and external amenity spaces.

The provision of an outdoor bar servery is likely to mean that significant numbers of customers occupy the new beer garden in preference to going inside the pub or staying within the existing outdoor seating area. This intensifies the customer use of the area, such that it is likely to be busy on a regular basis, especially during pleasant weather and at weekends. Residents may no longer be able to plan to enjoy their external areas during such times and may have to close windows to shut out the noise when ventilation is needed.

The operation of the server kiosk may need a generator to provide power and bins for the discard of empty bottles, both of which could exacerbate the noise impact from customers. The servery is likely to be frequently busy with potentially noisy customer queues that could be troublesome for the residents in close proximity.

The licensing of the proposed car park for use as a beer garden where alcohol can be sold would permit an unrestricted number of outdoor events and attractions such as live screenings of sport, musical entertainment and barbeque type events, the latter widening the scope of potential nuisance impacts to include smoke and odour.

I consider that the only regular use of the car park for customer use that could be supported would be as an appropriately managed and suitably screened ancillary seating area for use to support the core functioning of the pub whilst Government Covid-19 restrictions on social distancing are in force. However, under normal circumstances the focus of licensed activities should remain within the pub and to existing external areas where potential nuisance impacts can be better contained, screened and separated from residents.

The provision of bi-fold doors to permit access to the proposed beer garden may allow noise break out from within the pub to affect the adjacent residential properties, should these be kept open. I have proposed a condition to require the doors to be kept shut closed at all times when any performances of live or recorded music, including from a DJ, are taking place within the area annotated as a Dining area/Function room to the supporting drawing ref. 2057 - 301. However this request has been declined in view of an existing condition requiring doors and windows and doors to be kept closed after 22:00 when amplified musical entertainment is taking place inside the premises save for entrance and exit purposes.

Since the doors allow entrance directly into the Dining area/Function room, where entertainment could be taking place, I am concerned that the use of these doors by customers would allow excessive noise to escape and cause a nuisance to the adjacent residential properties. The current condition would permit these to be open until 22:00 and used afterwards by customers wishing to access or egress the pub. As the doors are bi-fold it is likely they will remain open after any use, therefore I would maintain my request that a condition requires these doors to be kept closed at all times, except for an emergency, whilst a performance of musical entertainment is underway.

In order to protect residents from the possibility of nuisance impact, I would request that **no varied Premises Licence is granted to permit the sale of alcohol from an external bar servery** in order to minimise the potential for nuisance arising from the operation of the proposed beer garden.

In addition, I would request that the supporting drawings are clarified to confirm that **no area to the north of the red line shown in the map below is to be provided for customer use** in order to ensure that customers are not positioned too close to the residential boundary where any nuisance noise could be particularly impactful.



I would also request that **no varied Premises Licence is granted until the application is supported by proposals for a suitable acoustic barrier of minimum 10kg/m² superficial mass to be installed along the north-western boundary with residential properties on Eddisbury Avenue.**

Subject to the above changes being agreed, I consider that any granted varied Premises Licence must be subject to the following operational controls in order to minimise the impact of nuisance:

- The outdoor seating area positioned on the former car park to the west of the pub building shall not be used by customers outside the hours of 11:00 and 21:00 on any day. Customers shall not be allowed to remove glasses or bottles from the premises and take them to this area except between these hours. Prior to the use of the area commencing, details of a suitable restriction to prevent customers accessing this area shall be submitted to the Licensing Authority for approval and the approved restriction shall be kept in place outside the hours of 11:00 and 21:00 on any day. Prior to the use of the area commencing, signs indicating the restrictions of

use shall be placed in a prominent position adjacent to the entrance and exit of the area and retained at all times thereafter.

- The outdoor seating area positioned on the former car park to the west of the pub building shall not be used for the following activities at any time: the sale of alcoholic drinks, congregations of standing groups of customers, any screenings of TV, films or sport, and the provision of live or recorded musical entertainment.
- Except for emergency egress, the bi-fold doors leading to the outdoor seating area positioned on the former car park to the west of the pub building shall remain closed at all times when any performances of live or recorded music, including from a DJ, (but excepting background pre-recorded music), are taking place within the area annotated as a Dining area/Function room to the supporting drawing ref. 2057 - 301.

Regards,
Peter Belfield

Environmental Health Officer
Pollution & Housing Team, Regulatory Services, Trafford Council, Trafford Town Hall, Talbot Road, Stretford, Trafford M32 0TH.

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From: George Domleo [redacted]
Sent: 21 May 2021 10:07
To: Belfield, Peter <[redacted]>
Cc: Armstrong, Katie <[redacted]> Licensing <licensing@trafford.gov.uk>
Subject: RE: Full Premises Licence Variation Application - Fox & Hounds Hotel, 201 Woodsend Road, Flixton, Manchester, M41 8QW

Dear Peter

Thanks for your email.

I have now been provided with my client's instructions on the several points raised in your initial email of 12/05 and I am able to provide a more detailed response to the additional conditions you have requested.

- The outdoor seating area positioned on the former car park to the west of the pub building shall not be used by customers outside the hours of 11:00 and 21:00 on any day. Customers shall not be allowed to remove glasses or bottles from the premises and take them to this area except between these hours. Prior to the use of the area commencing, details of a suitable restriction to prevent customers accessing this area shall be submitted to the Licensing Authority for approval and the approved restriction shall be kept in place outside the hours of 11:00 and 21:00 on any day. Prior to the use of the area commencing, signs indicating the restrictions of use shall be placed in a prominent position adjacent to the entrance and exit of the area and retained at all times thereafter.

We are happy to accept a condition stipulating "*The outdoor seating area positioned on the former car park to the west of the pub building shall not be used by customers after 21:00 on any day*". Katie – FYI

For information purposes only, our client has made me aware that they have a gate between the already existing front beer garden and this said area which will be closed when the area is not in use

- The outdoor seating area positioned on the former car park to the west of the pub building shall not be used for the following activities at any time: the sale of alcoholic drinks, erection of a marquee or covering to the seating area, congregations of standing groups of customers, any screenings of TV, films or sport, and the provision of live or recorded musical entertainment.

We can't accept this.

- Except for emergency egress, the bi-fold doors leading to the outdoor seating area positioned on the former car park to the west of the pub building shall remain closed at all times when any performances of live or recorded music, including from a DJ, are taking place within the area annotated as a Dining area/Function room to the supporting drawing ref. 2057 - 301.

We can't accept this as there is already a condition on the licence stipulating that when amplified musical entertainment is taking place inside the premises after 22:00 windows and doors, save for entrance and exit purposes, will be kept shut.

Regards

George

George Domleo
Associate
Licensing



Flint Bishop LLP St. Michael's Court, St. Michael's Lane, Derby, DE1 3HQ



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From: Belfield, Peter <[REDACTED]>
Sent: 19 May 2021 14:39
To: George Domleo <[REDACTED]>
Cc: Armstrong, Katie <[REDACTED]> Licensing <[REDACTED]>
Subject: RE: Full Premises Licence Variation Application - Fox & Hounds Hotel, 201 Woodsend Road, Flixton, Manchester, M41 8QW

Thank you George for the update, however in view of your comments I must proceed with a Representation to object to the granting of the varied Premises Licence which I shall put forward in the near future. If there is any change in stance in the meantime please do let me know.

Regards,
Peter Belfield

Environmental Health Officer

Pollution & Housing Team, Regulatory Services, Trafford Council, Trafford Town Hall, Talbot Road, Stretford, Trafford M32 0TH.

Tel: [REDACTED]

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From: George Domleo [REDACTED]

Sent: 19 May 2021 14:27

To: Belfield, Peter <[REDACTED]>

Cc: Armstrong, Katie <[REDACTED]>

Subject: RE: Full Premises Licence Variation Application - Fox & Hounds Hotel, 201 Woodsend Road, Flixton, Manchester, M41 8QW

Dear Peter

I'm still waiting for our client to come back to me on several points raised in your email below, but I can confirm that we shall not be removing the proposal for the sale of alcohol to take place from an external bar servery from the application and proposed licensing plan. Nor are we going to make any other changes to the proposed plan.

Regards

George

George Domleo

Associate

Licensing

DD [REDACTED]

Flint Bishop LLP St. Michael's Court, St. Michael's Lane, Derby, DE1 3HQ

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From: George Domleo

Sent: 12 May 2021 17:58

To: 'Belfield, Peter' <[REDACTED]>

Cc: Armstrong, Katie <[REDACTED]> Licensing <[REDACTED]>

Subject: RE: Full Premises Licence Variation Application - Fox & Hounds Hotel, 201 Woodsend Road, Flixton, Manchester, M41 8QW

Dear Peter

I shall take our client's instructions on the points raised in your email and respond to you in full shortly.

Regards

George Domleo

Associate

Licensing



Flint Bishop LLP St. Michael's Court, St. Michael's Lane, Derby, DE1 3HQ

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From: Belfield, Peter <[REDACTED]>
Sent: 12 May 2021 13:17
To: George Domleo <[REDACTED]>
Cc: Armstrong, Katie <[REDACTED]> Licensing <[REDACTED]>
Subject: Full Premises Licence Variation Application - Fox & Hounds Hotel, 201 Woodsend Road, Flixton, Manchester, M41 8QW
Importance: High

Dear Mr Domleo,

I've been consulted on the above application specifically on how the proposed licensable activities relate to the Licensing Objective for the prevention of public nuisance and note that you are representing the applicant in this matter. I would be grateful if you could acknowledge receipt of this email.

The proposed extension to the beer garden occupies the car park to the west of the pub which will be large enough to accommodate many dozens of customers outside directly adjacent to neighbouring residential properties on Eddisbury Avenue and Peers Close. Openable windows to habitable rooms of these dwellings would overlook the new seating area at close range. In addition, the closest properties on Eddisbury Avenue possess external amenity spaces that abut the boundary to this area.

The area is likely to be most popular during pleasant weather when residents may wish to keep their windows open for ventilation and enjoy their outdoor amenity spaces. The background noise level will subside as local shops close for the day and local traffic subsides through the evening. Typically, noise from patrons will increase as they enjoy their visit, characterised by laughter, shouting and multiple conversations, which can be very intrusive in nature.

Please be aware that I am investigating strong complaints of noise nuisance and disruption being caused to local residents since the area was utilised for outdoor seating on reopening of the pub last month.

I note from the application form and supporting plan that the sale of alcohol is proposed from an external bar server which is to be installed adjacent to the boundary with the nearest residential properties. My concern is that such a feature will actively encourage customers to occupy the new external seating area in preference to existing seats closer to the pub that are better screened and positioned away from residents. It may also draw out customers from inside who would wish to be positioned near to a bar.

I understand that Covid-19 restrictions have placed significant difficulties on the hospitality industry in accommodating customers on their premises. However I must consider that what is being proposed is, in effect, an outdoor pub, being placed directly adjacent to residential properties, in an area that to my knowledge has never been used as such, for perpetuity.

The effect could be that the new seating area would always be busy or fully occupied, especially during pleasant weather. Residents may no longer be able to plan to enjoy their external areas during such times and may have to close windows to shut out the noise when ventilation is needed. Such impacts are likely to cause a significant nuisance, contrary to Licensing objectives requiring this to be prevented.

I do not wish to stand in the way of the pub having the option of providing some additional seating outside in a manageable way, should this be absolutely necessary whilst Government Covid-19 restrictions are in force. However the provision of an external bar server significantly intensifies the proposed customer use of the area with serious potential consequences for neighbours that would continue unabated beyond any conclusion to the Covid-19 pandemic.

As such I unfortunately cannot support the sale of alcohol from an external bar server and would request for these aspects to be removed from the application and plan. In addition, I would not support the re-utilisation of this northern segment of the side car park for any additional seating since this could exacerbate noise impacts to the closest residents. As such I would request that this area is taken out of the proposed licensed area and the supporting plan be suitably amended.

I have noted that the boundary fence to properties along the north-western boundary is only of lightweight slatted timber construction and in poor condition. This fence would not serve as an effective noise barrier and so I would request that proposals be submitted for a suitable acoustic fence to be installed along this boundary to minimise the impact of nuisance noise ingress from the new external seating area.

Assuming the above can be agreed, I would request the following additional conditions relevant to the operation of the new external seating area be attached to any varied Premises Licence:

- The outdoor seating area positioned on the former car park to the west of the pub building shall not be used by customers outside the hours of 11:00 and 21:00 on any day. Customers shall not be allowed to remove glasses or bottles from the premises and take them to this area except between these hours. Prior to the use of the area commencing, details of a suitable restriction to prevent customers accessing this area shall be submitted to the Licensing Authority for approval and the approved restriction shall be kept in place outside the hours of 11:00 and 21:00 on any day. Prior to the use of the area commencing, signs indicating the restrictions of use shall be placed in a prominent position adjacent to the entrance and exit of the area and retained at all times thereafter.
- The outdoor seating area positioned on the former car park to the west of the pub building shall not be used for the following activities at any time: the sale of alcoholic drinks, erection of a marquee or covering to the seating area, congregations of standing groups of customers, any screenings of TV, films or sport, and the provision of live or recorded musical entertainment.
- Except for emergency egress, the bi-fold doors leading to the outdoor seating area positioned on the former car park to the west of the pub building shall remain closed at all times when any performances of live or recorded music, including from a DJ, are

taking place within the area annotated as a Dining area/Function room to the supporting drawing ref. 2057 - 301.

If you are in agreement to the above-mentioned changes and conditions, I'd be grateful if you could reply back to me confirming as such.

Please note that if an agreement cannot be reached on the above requests, then it may be necessary for me to put forward a representation against the granting of the varied Premises Licence as proposed, which will be determined at a hearing of the Licensing Sub-Committee.

I would appreciate a reply as soon as possible due to the restricted timescales for the completion of the agreement. Please contact me should you have any queries on this matter.

Regards,
Peter Belfield

Environmental Health Officer
Pollution & Housing Team, Regulatory Services, Trafford Council, Trafford Town Hall, Talbot Road, Stretford, Trafford M32 0TH.

Tel: [REDACTED]

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