

Diaper, Dawn

From: Stagg, Dom
Sent: 22 February 2024 09:25
To: licensing
Cc: Diaper, Dawn
Subject: FW: New Premises Licence Application - 128 High Street, Newmarket, - My Ref: WK/202401225 - *** OBJECTION ***
Attachments: New Premises Licence Application - 128 High Street Newmarket.pdf; Plan - 128 High Street Newmarket.pdf; Public Notice - 128 High Street Newmarket.pdf; NJ20231123P3-Residents'-plea-to-planners-to-reject-'deafening'-aircon-units.pdf; Complaints of noise from Fan/Refrigeration unit at 128 High Street. Newmarket

Categories: Dawn

Dear Licensing,

I have reviewed the attached application and on behalf of the Private Sector Housing and Environmental Health (PSH & EH) Team need to advise that I **OBJECT** to this application on the grounds of promoting the prevention of public nuisance licensing objective for the following reasons. Apologies for the length of this email, but I feel t's important I set out the context to my objection.

The premises are currently the subject of an extant application for planning permission (*DC/23/1182/FUL a. Installation of timber shop front; b. compressor unit to rear external wall*) – see <https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RYEQJ7PDKN500>, which was validated in **July 2023**.

Environmental Health has objected to the planning application on the basis of insufficient information having been submitted in order to assess the impact of noise on current and future occupants at the nearest sensitive receptors from a proposed refrigeration compressor unit to the rear external wall.

In fact, two separate units have been installed, contrary to the submitted plans for the planning application.

Our original comments in respect of the above were submitted on **11 October 2023**, in summary requesting that a Noise Impact Assessment is undertaken to establish the impact of the proposed compressor(s), prior to the planning application proceeding.

I expanded upon these comments on **23 November 2023** (see https://planning.westsuffolk.gov.uk/online-applications/files/512C6F0C22CB79AC10971862DB087BCE/pdf/DC_23_1182_FUL-PRIVATE_SECTOR_ENVIRONMENTAL_HEALTH_-_FURTHER_COMMENTS-2203689.pdf) further to a media alert that day, specifically in respect of a story on Page 3 of the Newmarket Journal '*Residents' plea to planners to reject 'deafening' aircon units*' (copy attached).

As a consequence of residents contacting the Planning Team about this application, we were passed details of 3 complainants about the noise from the units that have been installed.

A colleague emailed points of contact for the business that we had been provided by the Planning Team on **10 December 2023** bringing these complaints to their attention (copy attached).

Furthermore, that colleague and I visited two local residents on the evening of **14 December 2023** to assess the noise from the units – this was our feedback to the Planning Team the following day:

- *The two units in question generate noise levels which were audible inside the rear bedrooms with the windows open, and within the external amenity of one of the properties. When the windows were closed the noise became less intrusive and what we would describe as barely audible (although still noticeable).*
- *The units kicked in at different intervals, and the unit on the right-hand side as you face them from the outside has a particularly loud 'rumbling' sound, which only lasted for a few seconds at a time but recurs frequently. Our opinion was that because the noise levels fluctuate and that the units stop / start frequently makes them more likely to attract attention and thereby makes it easier to become sensitised to them.*
- *We discussed our enforcement powers and the concept of statutory nuisance with the residents and that based on our observations we were of the opinion that what we had witnessed was on the threshold of being regarded as a statutory nuisance, given the complainants right to ventilation i.e. not to have to close their windows to block the sound out. We would need to undertake further visits to confirm our opinion on this. Both of the complainants we have visited have been briefed on Statutory Nuisance and the difference between loss of amenity and annoyance, that being that Statutory Nuisance is a higher level of disturbance [than the threshold for having an impact on residential amenity in Planning terms].*

We didn't receive any response to our email of 10 December 2023 to the business about the noise complaints received until **24 January 2024**, which was from the Agent for the planning application, in which he stated, "*I wanted to inform you that the applicant has instructed a Noise Impact Assessment to form part of the current live planning application which relates to the installation of the refrigeration units to the rear elevation of the property*".

I replied to that email on **30 January 2024** to acknowledge receipt, likewise the Planning case officer responded too on **1 February 2024**. At the time of writing, no further correspondence has been received by Environmental Health and no noise impact assessment has been submitted in respect of the planning application.

I appreciate, of course, that the Planning and Licensing regimes are intended to be kept separate to avoid duplication and inefficiency. Each regime involves consideration of different (albeit related) matters, and decisions made by either authority (negatively or positively) don't convey any responsibility on the other to follow suit. However, paragraph 9.45 of the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (December 2022) states:

9.45 Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

Environmental Health have been in regular contact with the Local Planning Authority (LPA) about the extant planning application and, at the time of writing, I think it's fair to say that both do not currently view the situation as being acceptable as it stands. I appreciate, of course, that the LPA is a responsible authority under the Licensing Act 2003 so has the opportunity to make its own representations in this regard.

Furthermore, it is also evident from the Home Office Guidance that Licensing cannot 'override' Planning – for example:

14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

Likewise:

*16.8 Of course, anyone involved in the organisation or provision of entertainment activities – whether or not any such activity is licensable under the 2003 Act – must comply with any applicable duties that may be imposed by other legislation relevant to the event (e.g. in areas such as crime and disorder, fire, health and safety, noise, nuisance and **planning**) [my emphasis].*

My concern here, and therefore the grounds for my objection to this Premises Licence application, is that, in my opinion, to date the Applicant has demonstrated 'bad faith' in the course of their planning application, as set out above i.e. in summary, they have installed two rather than one refrigeration compressors contrary to submitted drawings for the application and, indeed, have opened and are trading from the location without the correct planning consent. Furthermore, they have failed to engage properly with Environmental Health in connection with noise complaints brought to their attention in early December 2023. It is also my understanding that they have failed to engage with Planning until very recently in respect of requirements they have requested since November / December 2023.

This 'bad faith' may not be deliberate or malicious (and as set out below the planning application does seem to be progressing now), however, it does give me cause for concern that the Premises Licence applicant could, potentially, be equally non-compliant within the Licensing regime too, specifically with respect to complying with Licence conditions. It is, in part, for this reason too that I feel I must object to this application, rather than recommend conditions for the promotion of the prevention of public nuisance licensing objective.

The Licensing Team will be aware that it's very unusual for Environmental Health to object to an application outright, it normally being the case that conditions to promote the prevention of public nuisance can allay any concerns we might have. In that context, I don't make this objection lightly.

That said, I understand the Agent has (email dated **1 February 2023**) acknowledged the residents' concerns regarding the installed compressor units and therefore indicated "*The intention now, having considered the current circumstances and feedback, is to submit a new proposal for an alternative, safer and more discreet location for these units, further away from nearby neighbours, instead of submitting a proposal for the 'as existing' arrangement as previously discussed*".

The latest information I have from Planning is an email from the Agent dated **14 February 2024**, as follows:

*"Please note that the initial noise assessment survey has been carried out but the assessor, Peak Acoustics, needs to return to take further sound level measurements with the refrigerator units turned off. This has been scheduled for **21st February** [my emphasis] - their earliest available date.*

Once the noise impact assessment is completed and provided to us, I will forward this to you together with the updated drawings taking their recommendations into consideration. As previously mentioned to Tamara, the noise assessment will provide mitigation measures to reduce noise impact".

However, at the time of writing (**22 February**) no updated or new design proposal, drawings or noise impact assessment have been submitted.

Irrespective of the above, the Environmental Health Team has an existing noise complaint related to the premises, which from the preliminary investigation undertaken on the evening of 14 December 2023 could be likely to be regarded as a statutory noise nuisance under the Environmental Protection Act 1990. This preliminary opinion is based on the noise from the compressors being frequent (every day, 7 days a week), prolonged (intermittent but essentially 'constant' due to high repetition) and at times most likely to have an adverse impact (i.e. throughout the night, as well as throughout the daytime). In that context, I can't in all good professional judgement not object to this application at this time.

The noise impact assessment and intended mitigation measures to reduce the noise impact may well resolve my concerns and enable me to withdraw this objection. I can confirm that I don't have any other 'in-principle' objections to this retail store having a Premises Licence for the sale of alcohol, and am mindful that the Home Office Guidance makes it clear that shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

However, the deadline for response to this Premises Licence consultation is **28 February**, and at the time of writing it feels unlikely that the noise impact assessment report, with its recommendations, will be received before this deadline. In any event, I am on annual leave **from 23 February to 4 March 2024** so won't have any opportunity to review anything submitted to Planning before then.

In summary / conclusion, I currently object to this Application for a Premises Licence in the interest of promoting the prevention of public nuisance licensing objective.

However, I am prepared to consider any submissions provided by the Applicant / their Agent in respect of the extant Planning Application, specifically the noise impact assessment we (Environmental Health) have requested and, of course, any recommended mitigation measures. Subject to receiving and reviewing these, without prejudice I **may** be in a position to consider withdrawing this objection. Should that be the case, I would be satisfied no Hearing would be necessary in respect of these comments, although whether a Hearing is necessary may, of course, also be dependent on any other relevant representations made by the other responsible authorities / interested parties.

As noted above, I am on annual leave from Friday 23 February until Monday 4 March, however I will be contactable from then and am happy to work with the Licensing Team / Applicant to try and find a way forward on this matter. But, for the avoidance of doubt, for my purposes this is dependent on receiving and reviewing a noise impact assessment with suitable and sufficient mitigation measures in respect of the refrigeration compressor(s) for the store such that these won't have an adverse impact on noise sensitive receptors. This objection is therefore to promote the prevention of public nuisance licensing objective.

Kindest regards,

Dom

Dom Stagg
Environmental Health Officer
Private Sector Housing and Environmental Health
Regulatory Services
Direct dial: 01284 757043
Email: Dom.Stagg@westsuffolk.gov.uk
www.westsuffolk.gov.uk
West Suffolk Council
#TeamWestSuffolk

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