



Memorandum

To Senior Licensing Officer Our Ref: 276830
From Principal Environmental Health Officer YourRef:WK/276830

Subject VARIATION OF PREMISES LICENCE.
Cactus Ray's, Unit 7 Burscough Wharf, Burscough, L40 5RZ

Date 03 March 2023

Thank you for consulting me with regard to this application.

Environmental Health wish to raise an objection to this application on the grounds of prevention of public nuisance objective.

In summary, the applicant seeks to vary the licence to remove the current condition which states,

"No music or speech shall be relayed via external speakers other than for events where the prior approval of the Licensing Authority has been obtained".

In removing the above condition, the applicant seeks to provide recorded music in the outdoor area daily between 11.00 and 22.00 and live music in the outdoor area on a seasonal basis between April and Sept and the month of December between the hours of 12.00 to 22.00 on a Thursday through to Sunday.

In addition, the applicant seeks to extend the provision of live music at the venue and introduce recorded music in venue. At present live music is permitted on Friday and Saturday between 19.00 and 23.00 and recorded music is not currently specified on the licence.

External Area

Firstly, and of most concern is the proposal to vary the licence to provide music on a regular basis in the external courtyard area. There, a number of reasons for this as outlined below.

- The applicant has not considered the location of the premises and the proximity of residential and other noise sensitive premises.

- The applicant has not demonstrated they are intending to take appropriate steps to minimise any adverse impacts which are likely to affect the promotion of the objective to prevent public nuisance.
- The applicant has not demonstrated that the noise associated with the provision of outdoor entertainment, which takes place late into the evening or which takes place on a frequent basis at any time can be controlled in a manner that it will not be distinguishable at the boundary of neighbouring residential premises. Environmental Health are aware there are properties within 35m of the Wharf site and therefore there is the significant potential for music noise to impact on nearby residential premises especially when generated outdoors.

On the current licence for Cactus Ray's, there is a further condition stating, "Noise from music and associated sources (including amplified voices) shall not be clearly distinguishable at the boundary of any neighbouring residential premises after 20.00 hours." Environmental Health fail to see how the applicant can comply with this condition if providing music outdoors and therefore there is the potential that this condition will be undermined if the variation is granted.

There is another licence currently in place for the external courtyard area that allows for activity such as live and recorded music. This licence is held by another operator. Environmental Health have concerns that the potential for the cumulative impact of multiple operators operating live/recorded music under separate licences, in a relatively small area could led to competing music output and in addition some ambiguity in who is responsible should complaints/enforcement come forward. A more holistic approach is needed with regards to the utilisation of the external courtyard area for the provision of live and recorded music. The approach that is being adopted by the operator of Cactus Ray's, via this variation, would if granted potentially undermine conditions already in place relating to the wider courtyard licence.

Given the current lack of information and controls identified, Environmental Health do not feel it is possible to support the removal of the current condition stating, "No music or speech shall be relayed via external speakers other than for events where the prior approval of the Licensing Authority has been obtained", until such a time when the concerns have been adequately addressed.

I note from the application (section M) that there is an intention to "serve" outside however there is no information regarding the external service point/bar so I have taken this to mean the consumption within the external seating area which is not a licensable activity. A restriction on the timings the courtyard can be used is already in place on the licence that currently regulates activity in the courtyard area.

Internal Area

The application seeks to significantly increase the timings and frequencies that live and recorded music can take place at the venue. Environmental Health considers the noise sensitive night-time period to be between the hours of 23.00 and 07.00 and noise generated during this period does have the potential to disturb people. Given the proximity to residential premises Environmental Health would expect to see certain control in place to uphold the objective of preventing public nuisance.

At present the application is lacking in that there is no information provided on the ability of the building's envelope to adequately contain music noise or assessment of the weak points in the structure or mitigation of any weaknesses. It has been noted that on a visit to site on Friday 23rd Sept 2022 that noise from the operation of live music from Cactus Ray's was audible in the car park area that bounds the nearest residential properties. This would indicate that music can and does, at times escape from the building envelope. Limiting the live music to 23.00 would limit the potential for disturbance.

The application fails to advise the practical noise control measures (limitation devices etc) to be employed to reduce the risk of unacceptable noise associated with the operation of live and recorded music at the premises, especially in the period after 23.00. Given the lack of lobby at the premises there is limited ability to control noise breakout when people are entering and leaving the premises during periods when live and recorded music are taking place.

At present the applicant has not proposed sufficient safeguards within the application to demonstrate the proposal can meet the prevention of public nuisance objective. Environmental Health therefore object to the application on the grounds of prevention of public nuisance unless the following hours limitations and conditions are attached:

1. The operating hours of the premises shall be as follows:
 - A. Provision of Live Music -
That the provision of live music shall be permitted Indoors only:- in accordance with the hours permitted under the Live Music Act (as amended).
 - B. Provision of Recorded Music (indoors only) -
Sunday to Thurs – 11.00 until 23.00 hrs
Friday and Saturday – 11.00 until 00.00 hrs the next day
Non Standard Timings: - New Years Eve 12 noon until 01.00 the next day.
 - C. That the premises shall be open to the public:
Sunday to Thurs – 09.00 until 23.30 hrs
Friday and Saturday – 09.00 until 00.30 hrs the next day
Non Standard Timings: - New Years Eve 09.00 until 01.00 the next day.

- D. That the sale/supply of alcohol shall be permitted on and off the premises:-
Sunday to Thurs – 11.00 noon until 23.00 hrs
Friday and Saturday – 11.00 noon until 00.00 hrs the next day

.....
Carol Pollitt
Principal Environmental Health Officer