

## **DECISION NOTICE**

**PREMISES: 'Proper Sound', 8 Chestergate, Macclesfield, Cheshire, SK11 6BA**  
(‘the Premises’)

### **The Matter for Hearing**

1. At 14.00pm on the 17th June 2021, the Licensing Act Sub-Committee convened remotely and heard an application for a new Premises Licence made pursuant to the Licensing Act 2003 S17.

### **Procedural Matters**

2. The hearing was held in accordance with the Licensing Act Sub-Committee’s published procedure and the Licensing Act 2003 (Hearings) Regulations 2005.
3. Advertising requirements as prescribed by the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 were adhered to.
4. In its consideration of the application, the Sub-Committee took into account:
  - The Secretary of State’s Guidance under the Licensing Act 2003 S182 (April 2018);
  - Cheshire East Borough Council’s Statement of Licensing Policy;
  - the four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm) and the steps appropriate to promote them;
  - The oral and written representations made by all parties.

### **Hearing of the Application**

5. The Licensing Act Sub-Committee heard from Mr James King and Ms Lucie Wright (‘the Applicants’) of Proper Sound, 8 Chestergate, Macclesfield, SK11 6BA.
6. The Licensing Act Sub-Committee also heard from Cllr Liz Braithwaite of Macclesfield Central Ward objecting to the application who also spoke on behalf of Ms Nicoletta Cavriani and Aimee Ainsworth and also heard from Ms Heidi Jane De Botte, local residents objecting to the application (‘the Objectors’).

7. It was noted that the Applicants had agreed conditions with Cheshire Constabulary and that there were no objections from Environmental Health.
8. In light of communication via Macclesfield Town Council's official Twitter account regarding the premises the previous day, Cllrs David Edwardes and Alift Harewood declared in the interests of openness and transparency that they are also elected Councillors of Macclesfield Town Council. They did confirm that they had not been consulted prior to the Twitter communication being released, their views had not been pre-determined and that they would proceed to consider the application in accordance with relevant law, policy and members code of conduct.
9. The members of the Sub-Committee also confirmed they had received an e-mail from a local resident but had disregarded it.
10. It was noted that following dialogue with residents the Applicants agreed to reduce the operating hours of the licensable activities so they would finish at 19:30 rather than 23:00.
11. The Applicants explained to the Sub-Committee of the concept of their business, which is intended to be predominantly a retail outlet selling artwork and apparel but with an area to provide refreshment and alcoholic drinks. They also advised it was not their intention to open a late night and excessively noisy venue, it was to create a relaxed atmosphere. The Applicants advised their reasoning behind this was the need to explore additional revenue streams following the impact of the Covid-19 pandemic. The primary purpose of the venue is not sale of alcohol, it was an additional revenue stream akin to a customer at a hairdresser's being served a drink.
12. The Applicants also explained to the Sub-Committee that they felt the concept of their business may have been mis-understood initially. They re-iterated it was not their intention to operate a noisy venue and they also wanted to finish work at a reasonable hour and spend the evening with their family.
13. In response to questions from the Objectors the Applicants confirmed they intended to play music within the operating hours but generally no later than

18:00/18:30pm. They also confirmed that the music was intended to be background music for ambience and although played through an amplifier, would generate low levels of noise.

14. In response to questions from the Objectors the Applicants stated that there had been issues with noise complaints, but these were attributable to general work being carried out on the building and prior to sound proofing and adequate plumbing being installed in the unit rather than being attributable to licensable activities.
15. In response to questions from the Objectors the Applicants confirmed it was their intention to sell alcohol but purely in moderation and not in the manner that may have been initially perceived or feared.
16. In response to questions from the Sub-Committee about the courtyard, the Applicants confirmed they did intend to create an outdoor seating area there but that it would not generate significant noise and would be similar that of a garden in a terraced house. The Applicants confirmed they did not intend to place speakers in the courtyard.
17. In response to questions from the Sub-Committee about the premises generally, the Applicants confirmed that although the seating arrangements had not yet been finalised the capacity of the premises would be approximately 10 people and it was unlikely the outdoor seating area in the courtyard would significantly increase it.
18. The Applicants confirmed that they had installed noise mitigation measures such as concrete slabs, a false ceiling with a raised roof (underneath where they intend to put the kitchen). They also intend to install measures to mitigate the sound emanating from the speakers.
19. Cllr Braithwaite presented her objection to the application to the Sub-Committee. She summarised her detailed written representation and stated that she was objecting to preserve the quality of life for residents which would be impacted detrimentally by the noise nuisance generated by the premises the outside activity and felt that it was unclear what the purpose of the business was.

20. Ms Heidi Jane De Botte also presented her objection to the application to the Sub-Committee which centred mainly around her concern about noise nuisance. She stated that her bedroom window directly overlooks the courtyard and that she can hear the noise from there, such as music and even the builders' radio when they were working at the premises.

21. In response to questions from the Sub-Committee, the Objectors confirmed that the prospect of noise nuisance emanating from the premises was their main concern and they remained unsatisfied that sufficient measures were put in place to control it.

### **Determination**

#### **THE DECISION OF THE LICENSING ACT SUB-COMMITTEE WAS AS FOLLOWS:**

22. Having considered the Application and all relevant representations made both in writing and during the hearing and having had due regard to the statutory guidance and the Council's statement of licensing policy, the Sub-Committee has decided to **GRANT** the application for a new Premises Licence at 'Proper Sound', 8 Chestergate, Macclesfield, Cheshire, SK11 6BA.

23. The Sub-Committee granted the new Premises Licence for the following licensable activities and subject to the following operating schedule:

#### **Sale And Supply of Alcohol (inside and outside the premises):**

Monday – Sunday: 10:00 – 19:30

Extended to 21:00 on days of seasonal events in Macclesfield Town Centre

Extended to 21:00 for six events in addition to the seasonal events in Macclesfield Town Centre

24. The Sub-Committee granted the licence subject to the conditions agreed by the Applicant and Cheshire Constabulary pursuant to The Licensing Act 2003 S18(4)(a) as well as the following additional conditions;

***'The Premises Licence Holder must keep an incident logbook of complaints made pertaining to noise nuisance in which the DPS or other authorised***

***officer must record the following information in respect of such complaints; the name and address of the complainant, a summary of the incident, the date and time it occurred and the steps taken to resolve it. The incident logbook or relevant entries from it must be made available for inspection to a Licensing Officer or Police Officer upon request within 72 hours.'***

***'The Premises Licence Holder must submit an up-to-date and correct floor plan of the premises to the Licensing Authority prior to any licensable activity taking place'***

## **Reasons for Decision**

25. The Licensing Act Sub-Committee granted a New Premises Licence for the licensable activity of 'Sale and Supply of Alcohol' as that was the only licensable activity applied for.

26. The activities of 'Late Night Refreshment', 'provision of live music' and 'provision of recorded music' are not licensable within the premises' operating hours, including the extended hours applied for and which have been granted. Therefore, the Applicants are permitted to carry out these activities during the premises' operating hours and the Licensing Act-Sub Committee has no legal power to prevent them from doing so.

27. The Sub-Committee found that the main Licensing Objective engaged was prevention of public nuisance. The Sub-Committee considered the concerns raised by the Objectors about the prospect of noise nuisance emanating from the premises but found that the Applicants had put sufficient measures in place which mitigated against the prospect of an unacceptable risk of a public nuisance caused by noise nuisance. Such measures included the instillation of fire regulated concrete slabs between each floor and a false ceiling with a raised roof where the Applicants proposed to place the kitchen.

28. The Sub-Committee also found that the Applicants had gone to reasonable lengths to amend their application following the concerns raised by the residents, notably the amended operating hours.

29. The Sub-Committee found that the intended use of background music for ambience which although not licensable would assist in mitigating the risk of a public nuisance arising out of the activities that were licensable.

30. The Sub-Committee considered that the imposition of the additional conditions described above, were proportionate in ensuring the licensing objective of prevention of public nuisance was upheld.

31. In light of the above and in the circumstances the Licensing Act Sub-Committee were satisfied that the licensing objectives could be upheld in granting the application.

### **Effect of Decision**

32. This decision comes into effect immediately from the date of this Decision Notice.

### **Right of Appeal**

33. The parties are hereby notified that they may appeal against this decision to the Magistrates' Court within 21 days beginning with the date of notification of this decision (as per paragraph 9(2), Schedule 5 Licensing Act 2003).