

**Rumbling Tummies
37 Shropshire Street
Market Drayton
TF9 3DA**

New Premises Licence Hearing – 20/0300/LPREM

Date of Hearing 12th February 2021

**Representation from Environmental Protection – Responsible Authority
for Licensing Objective Prevention of Public Nuisance**

**The following report outlines objections to the application on the grounds
of Odour and Noise**

Prepared by :

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&

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Environmental Health Officer
Environmental Protection Team
Regulatory Services**

Date 1st February 2021

Rumbling Tummies Licence Hearing

Executive Summary

Acting as the responsible authority for The Prevention of Public Nuisance I have reviewed the application and wish to object on the grounds of noise and odour.

The Premises is surrounded by residential properties on either side, to the rear, and above there is a residential flat. The fabric of the building raises concerns about the ability to contain noise either from people, music or cooking operations in a busy kitchen environment. The applicant has provided no information on sound transmission or mitigation measures. Concerns also exist about potential noise from patrons gathered outside the premises.

The kitchen is ventilated by a basic extraction system that vents at a low level to the rear of the building within 2m of a residential garden. Cooking odours were witnessed during the site visit on 12.01.21. Clearly the increased hours associated with evening trade will magnify this issue. A busy commercial kitchen would normally have odour abatement controls and a high-level discharge. Noxious smells and odour are specifically mentioned in the section 182 Guidance of the Licensing Act 2003 as factors to be considered under The Prevention of Public Nuisance

Prior to making representations due regard was made to Shropshire Councils Statement of Licensing Policy 2019-2024. It is clear from this document that conditions must be appropriate to the premises in question, achievable and enforceable.

The Executive Summary states “there is a need for rigorous and enforceable licences”

Paragraph 9:6 states “Licensing will ensure premises are appropriate for their proposed use”

Paragraph 33:5 states “The Council will take the opportunity to ensure that premises licences contain relevant, fit for purpose and enforceable conditions”

The applicant has provided comprehensive conditions in relation to both odour and noise. However, these appear generic in nature and do not seem tailored or specific to the premises in question

Following the site visit I have concluded that on the balance of probability the conditions offered are not achievable, and that a breach is likely to occur shortly after opening, which in all likelihood would result in a Licence Review due to a public nuisance affecting adjacent dwellings should the application be granted in its current form.

Detail of the Objection

A site visit was undertaken on 12.1.21 at 10:00 to gain a better understanding of the layout and positioning of the Premises in relation to neighbouring properties. I have reviewed the application taking into account the site-specific circumstances, and in order to support the Licensing objective Prevention of Public Nuisance have to formally object to the application on the following grounds.

Noise

The Premises is in a residential area, with residential properties on either side and a flat above. (see photograph 1 attached). The fabric of the building is poor in terms of containing sound. There are 2 large single glazed windows to the front of the premises. There is no

entrance lobby system to contain sound, and the installation of such a system would severely impact on the available space for customers. A party wall is shared with No. 39 Shropshire Street, and it has been suggested that the sound absorption properties of this wall is poor, in part due to a chimney between the 2 properties.

A noise assessment has not been carried out by the applicant to consider the impact of people noise and/or the noise of cooking operations and/or music noise. As such there is not considered to be enough detailed information contained within the report to evidence that noise will not have an unacceptable impact on adjacent noise sensitive receptors. This aspect would usually be expected to be considered at planning approval stage. The last planning change of use granted for the site was to residential end use (planning class C3). No planning permission for A3 use can be found for the premises. The fact that it may be normal to expect a particular aspect to be considered at the planning regime rather than the licensing regime does not prohibit the licensing regime from considering the aspect (ref: *Gold Kebab Ltd v Secretary of State for Communities and Local Government [2015] All ER (D) 48 (Sep)*). In addition given that going forward a planning change of use class will not be required to move between A1 (shops), A2 (financial and professional services) and A3 (restaurants and cafes) land uses it is reasonable to expect that matters which may once have been considered at planning stage now require more consideration through the licensing regime as the new E class planning use removes the need for planning applications which may otherwise have allowed impact on amenity to be considered in respect of noise and odour impacts. This planning change came into force in September 2020.

For the reasons stated above I believe there is scope for noise nuisance thereby undermining the Licensing Objective. Should the applicant come forward with a noise assessment to quantify the likely impact of noise transmission through the fabric of the building to adjacent residential areas (expressly the flat at 1st floor level at no 37 and number 39 Shropshire Street) which finds noise levels are acceptable or mitigation is available this concern may be removed allowing additional aspects to be considered and relevant conditions proposed. For completeness sake the application has been assessed to provide detail on what future condition could look like to allow the applicant to consider if carrying out further work to pursue the application is desirable.

I note that a comprehensive set of conditions have been volunteered as part of the application, including conditions that relate to noise and odour, which read as follows :

No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises which gives rise to nuisance.

No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated

however I have concerns that the conditions cannot be achieved, and would be breached once the Premises Licence was granted and utilised by the business.

I consider that there is significant potential for noise disturbance from both music and people inside the venue, and also outside as patrons enter and leave, and potentially gather outside to smoke or wait for taxis etc. Additionally, there is a need to future proof the Premises Licence to ensure that the business remains as a bistro/restaurant and doesn't evolve to become a bar although it is accepted that this would require a change of use planning application from class E to A4.

To minimise these concerns I would suggest the following changes:

Opening Times –Close at 22:00 Sunday – Thursday, 23:00 Friday & Saturday with no additional hours of activity outside of these times (including bank holidays, Christmas eve, new years eve and any other specific date). This would be the latest times considered suitable. Should noise assessment show noise impact prior to these times additional consideration of times will be required.

Additional Conditions:

- **No alcohol to be taken off site in open containers**
- **Alcohol is only to be served to Patrons having a meal.**

I am open to the idea of minor changes to the above condition provided the underlying meaning is maintained, that the venue cannot be used as a drinking establishment and a noise assessment can be provided which evidences that this would not create a public nuisance.

Odour

The kitchen cooker hood vents to external environment via a small domestic type extractor fan (see photograph 2). The discharge point is at low level and close to the boundary of a residential property. There is no other ventilation in the kitchen to remove cooking odours and steam. Discharge of extracted air is horizontal into a narrow passageway where air cannot circulate easily. As such any extract air and odour associated with it is likely to be trapped in the area for significant periods due to its inability to disperse. The extraction system in its current form is not considered acceptable and is likely to give rise to a nuisance. The increased use from extended hours proposed should a premises license be granted is expected to result in both more intense odour and increased duration and frequency of odour in the locality. This is considered unacceptable given that the extraction system is found to be deficient in its current state.

During the site visit on the 12th. January 2021 at a time when the café was not busy due to lockdown (only doing take-away) grease and bacon odours could clearly be detected in a neighbouring garden.

Accordingly, I object to the application on the grounds of odour nuisance.

If a suitable extraction system appropriate to a commercial kitchen was installed, with a discharge point of a suitable height to minimise odour nuisance then I would withdraw the objection. Any system should have due regard to the DEFRA document Guidance on the control of odour and noise from commercial kitchens exhaust. It is acknowledged that this guidance document has been withdrawn by DEFRA however it is still considered to provide good practise by Shropshire Council's regulatory service department. For information it is likely that any system visible to nearby residential properties or to the town more widely would require planning permission.

Conclusion

In conclusion an objection to the proposed application on potential odour and noise nuisance is submitted. The likelihood of nuisance noise is based on scrutiny of the application details and a site visit coupled with experience of similar types of premises carrying out similar activities in a similar setting, residential properties adjoining and/or above, where nuisance was found to occur requiring the service of legal notice. It is not uncommon for such notices to restrict businesses to the point that they may struggle to operate as they had anticipated. The comments above are not placed to try and be overly restrictive. They are stated to ensure the premises has considered all aspects of the business which require licensing and may

create an impact on the locality. By ensuring thought is given upfront this may where possible remove the potential for additional unforeseen restrictions to the business which it has not accounted for and cannot achieve occurring later.

A significant amount of work is required to address the concerns raised which are likely to require a significant amount of resource and additional regulated activity through other regimes such as planning approval for certain aspects.

Photograph 1 – Front of Premises



Photograph 2 – Kitchen Extractor Vent

(wooden gate is boundary of residential garden)



