

Adam and Eve PH,
155 Homerton High St, London E9 6AS

Review Overview

Background information

1. The Adam and Eve is Public House situated in Homerton Hackney.
2. For historical interest there has been a pub in this location since at least 1735.
3. The current premises has the date 1915 inscribed on the front elevation, so potentially this is the last time the frontage was substantially refurbished.
4. The current licence holder purchased the premises in December 2013 and the garden area, that is being disputed by the licensing Authority and three residents, was opened for use by the public in the Summer of 2014.
5. The premises is a classic mixed use public house which is a well used community pub for Hackney residents and people working in local businesses. Due to its location a significant part of the local business trade comes from Homerton Hospital and the local schools.
6. The premises operates a full kitchen and on Sunday it is open for roast dinners. I have attached copies of the menu run by a local catering firm Krapow who are responsible operators and source all their fresh ingredients locally where possible.
7. I attach a copy of their menu for the Committee information as A&E01.
8. The Adam and Eve also shows live sports, has a L – shaped pool table and on weekends invites local creative people such as record labels or local artists to provide music in the front of the bar area, usually from 8pm. This music is controlled by the in-house sound system which is covered in greater detail in the accompanying acoustic report.
9. The pub directly employees 4 full time and 15 part time staff, all almost exclusively employed from the borough of Hackney.
10. As an ethical and responsible business, the Adam and Eve kept all the staff on throughout the covid pandemic. Unfortunately, in our keenness to keep operating we used all the area available to the premises for socially distanced drinking and we acknowledge this has now caused some of the concerns with a few immediate neighbours.

11. The garden area is still popular as since Covid as people are still naturally cautious and it is a key feature of our offer.

Complaints

12. The premises received a query from the local authority in May 2018 about the use of the external garden areas. This specific query related to use of the rear area to which access was concreted over as part of the noise measures instigated in 2021.

13. At the time Council officer had suggested that the use of this area was not on the licence plan so couldn't be used. The area in question forms part of the lease for the premises. So, the use of this area for the consumption of alcohol by customers is no different for example to another public house having a private frontage with tables and chairs.

14. The next correspondence was received in respect of the garden was then in May 2021 when the Licensing Authority served a Section 19 closure notice.

15. Contrary to what is stated in the review the closure notice was not allowed to expire. We met with the officers to discuss the licence and plans and explained that even if the areas were not specified on the plan that alcohol could be lawfully consumed in the areas. The Guidance issued under section 182 of the Licensing Act 2003 in force at time of this meeting is quite clear on this subject.

8:35 Applicants will want to consider whether they might want to use a garden or other outdoor space as a location from which alcohol will be consumed. The sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. In scenarios where drink orders are taken by a member of staff in the garden or outdoor space and the member of staff then collects the drinks from the licensed premises and returns to deliver them to the customer this would be treated as an off-sale and any conditions that relate to off-sales would apply.

8.36 In such cases it will be not necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence. However, it will be necessary for the applicant to include the garden or other outdoor space on the plan as part of the area covered by the premises licence if the intention is to provide a service whereby drinks are available for sale and consumption directly from that area (i.e. the provision of on-sales). This would apply in the case of an outdoor bar or a service whereby a member of staff who is in the garden or outdoor space carries with them drinks that are available for sale (without the need for the staff member to return to the licensed premises to collect them).

8.37 If the beer garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises, but the prescribed application form requires the applicant to provide a description of where the place is and its proximity to the premises.

16. Unfortunately, when reading the representations, both in respect of the application to regularise the premises in 2022 and now in respect of the licence review, this legal position has not been explained by the local authority. This means that the residents wrongly hold the belief that the use of these areas is in some way illegal.

17. This is simply not the case.

Covid pandemic, noise compliant and resident engagement

18. In June the premises arranged a meeting with residents and the local ward councillor.

19. It was explained prior to the meeting that due to the unique situation of Covid, where residents spent longer at home and the premises had been closed for long periods, had resulted in more noise complaints regarding outside areas across the country and not just specific to our venue.

20. As a venue though it was acknowledged that when the premises did re-open for socially distancing drinking, that due to people being deprived of social interactions during this period, that the garden was quite lively. When the residents meeting did happen, we apologised for any noise or disturbance caused.

21. We met with the Council and residents on the 16th of June 2021 at 1pm. At this meeting the residents were given the owners mobile phone number to continue dialogue and it was agreed that the premises would employ an acoustic consultant to conduct a survey.

22. In meantime a short time solution was proposed to reduce noise. These were as follows.

- The outside areas at Adam and Eve are for seated customers only and we are allowing no vertical drinking.
- We are only booking smaller groups of up to six and no birthday parties or special events.
- We will not be using the outside screens to show football as resident were very clear about the noise they have been causing.

23. In September 2021 the initial acoustic survey was carried out and initial measures to reduce noise outbreak were proposed. This is all again covered in more detail in the attached acoustic report.

24. On 8 November 2021 a new application was submitted to regularise the layout plan and to tighten up the licence conditions at the premises to promote the licensing objectives.
25. Due to the on-going Covid pandemic this application wasn't heard by Hackneys Licensing Committee until the 28 July 2022.
26. The Council Environment Health team were satisfied that measures and management processes put in place as part of this application promoted the licensing objectives and they withdrew their representation.
27. As part of this application, we offered a completely updated operating schedule and shared operating policies and procedures aimed preventing public nuisance and promoting the licensing objectives.
28. These policies are regularly reviewed and refreshed and I have attached the current documents as A&E2.
29. The new applicant was refused but the Committee did say that they "felt the current premises licence is fit for purpose and does cover the back external areas, however, the Applicant has failed to manage the premises.'
30. Furthermore, on 3 October 2022 the solicitors representing the premises at time did write to the Licensing Authority.
31. The letter reiterated that it would have been preferable to have updated the licence at the July 2022 hearing, but it was the Committee's preference that we continued to trade under the existing licence.
32. The letter stated that the premises was happy to continue trading under the existing licence and that it would manage the premises (and specifically the external area) on the voluntary basis set out to you in my original email below.
33. Specifically, to confirm, this will include:
- The external areas shall be regularly monitored by staff/door staff when in use
 - Email address and phone number will continue to be available to local residents to discuss any issues
 - Use of the rear garden will cease at 22:00
 - After this time there will be a maximum of 8 smokers outside the front of the premises (and they shall not be permitted drinks with them)
 - No TVs shall be used externally
 - Residents shall be invited to quarterly residents meetings
 - Agreed door openings have been blocked up
 - Acoustic seals/fire door have been replaced

- The extended bbq/beer garden area marked 'not for customer use' in the new proposed plans (submitted with the rejected licence application) will remain as such and no patrons will be permitted into these areas.

34. The letter went on to say premises had been managing the areas in this way since the hearing and have received no direct complaints from residents during that time.

35. So as such it was trusted that these arrangements were satisfactory, but if the Licensing Authority wished to discuss again further, the premises would be happy to do so at any time.

36. This letter is attached as A&E03

37. There was no response received to this letter and the next correspondence received were the review papers that are now before the Committee.

38. In addition, management staff e-mailed the Ward Councillor and main local resident on 29 September 2022 to re-engage a dialogue with the residents.

39. A reply was received on the 27th October 2022 from the local Councillor. This was only to say they had asked the local residents if they would like to meet. No further correspondence to this e-mail in respect of continuing resident engagement has been received.

40. Despite numerous requests since 2021 the venue have not been forwarded any direct reports of Hackney Council officer visits to any local residential addresses or indeed any reports of witness noise nuisance from our premises by local authority officers.

Licensing Review

41. We also understand it is highly unusual for a Licensing Authority to instigate a Licence review on the grounds of Public Nuisance especially when there hasn't been direct officer witnessed noise issues.

42. The Licensing Act 2003 revised guidance issued under section 182 of the Licensing Act 2003 (December 2022) seems quite clear on this point. It states:

[11.5] Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or

groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.

43. The review was submitted after two unsubstantiated complaints received on the same night in February 2023. The review application itself is subject to three residential representations in support of the review and one resident in support of the premises.

44. There is only one other responsible authority representation from the Environmental Health protection team. They state “the premises claims to have carried out noise mitigation works but Environmental Protection continues to receive complaints of noise from patrons in the garden area. Environmental Protection are satisfied with the additional proposed premises licence conditions as stated on the review application.”

45. In respect of the comments about the additional proposed conditions these are already being implemented as detailed in the solicitor’s letter as forwarded to the Licensing Authority to confirm this in October 2022. In addition, we have written to Mr Patti to ask if he was aware of this letter but have again received not reply.

46. In respect of the noise mitigation works completed last year at the premises, these were agreed and signed off by a colleague in the Environmental Health Protection team, to the extent that there was no representation submitted to the new application determined in July. If these measures need improving on then it would be reasonable to expect that the council would contact a business to discuss rather than submit a review without any warning.

47. As venue we are willing to continue to work with the responsible authorities to promote the licensing objectives but there has been no evidence provided that the current operation of the premises is causing a public nuisance or that the measures proposed in the review paperwork to restrict our garden area would reduce any noise outbreak.

48. We would like to stress again that we are happy to add all the suggested conditions recommended in the July 2022 application as list in A&E02. We are also happy to change the plan to remove the nearest areas to the residential properties as shown on A&E04.

49. We believe that working with the Councils Environment protection team and Peter Rogers our acoustic consultant we can operate the garden in its current layout without disturbing residents.

50. In summary we would like to remind members that the use of the areas specified on plan is lawful and that the optimal way to promote the licensing objectives is in this case is to leave it to the professional acousticians to agree the appropriate measures.