

BATH AND NORTH EAST SOMERSET

LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE

Monday, 16th May, 2011

Present:- Councillors:- Tim Warren, Tim Ball and Gabriel Batt

Also in attendance: Emma Stoneman (Senior Licensing Officer) and Francesca Smith (Senior Legal Adviser)

1 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Office read out the procedure.

2 ELECTION OF VICE-CHAIR (IF DESIRED)

RESOLVED that a Vice-Chair was not required on this occasion.

3 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

4 DECLARATIONS OF INTEREST

There were none.

5 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

6 REVIEW PROCEDURE

The Chair drew attention to the review procedure, copies of which had been made available to members of the public attending the meeting.

7 APPLICATION FOR A REVIEW OF A PREMISES LICENCE FOR BODRUM TAKEAWAY, 34 BROAD STREET, BATH BA1 5LP

Applicant for Review: Diarmid Henry (Environmental Health Officer)

Witnesses for Environmental Protection: Mr Remo Del-Greco, Ms Carlie Dent, Mr Neil Stanley and Ms Zoe Parry

Licence Holder: Ramazan Kolcak, represented by Professor Roy Light (St John's Chambers) and by Ms Kolcak

Responsible Authority: Avon and Somerset Police, represented by Martin Purchase, Inspector Steven Mildren and PC Gemma Kirby

Interested Parties: The Abbey Residents Association, represented by Ian Perkins

This application was adjourned on 18 April 2011.

The parties confirmed that they had received and understood the review procedure.

The Licensing Officer summarised the application, which was for the review of the premises licence for Bodrum Takeaway because of alleged nuisance to local residents caused by patrons congregating outside the premises in the early hours. The Applicant for Review had requested that the terminal hour for the provision of late-night refreshment be reduced from 03.00 to 00.00 on Sunday to Thursday and from 04.00 to 02.00 on Friday and Saturday.

A representation had been received from the Police in relation to the licensing objective of the prevention of crime and disorder. It suggested that a reduction in terminal hours may be necessary, but also recommended the imposition of a condition requiring 2 SIA doorstaff to be on duty at the premises from 23.00 hours to the end of licensable activities on Friday and Saturday each week to ensure good order in and outside of the premises. The Abbey Residents' Association had made a representation in relation to the licensing objective of the prevention of public nuisance.

A representation in support of the premises had been received from a local resident.

Additional information from the Environmental Protection Officer and the Police had been circulated to all parties before the meeting. The Licensing Officer advised that the Premises Licence Holder wished to request leave to submit additional information comprising a report from an acoustics consultant, a proposed dispersal policy and copies of notices to be displayed at the premises.

The Chair asked the other parties whether they would be content for these additional documents to be submitted by the licence holder. Professor Light apologised that the documents had been submitted late. This was because the licence holder's instructing solicitor had been on holiday and had not returned until 3 May. He stated that, when the additional information from the Police had been received the previous week, it was felt essential to respond to it on behalf of the licence holder and a report had therefore been commissioned from the acoustics consultant. The other parties indicated that they were content for the documents to be submitted, and the Chair allowed them time to read them.

Mr Henry stated his case. He summarised the history of complaints about the premises as set out in the application for review. He stated that he would play recordings of noise in the street associated with the premises, which had made in the home of one of the complainants. Professor Light objected to this, on the ground that no notification had been given by the Applicant for Review that he intended to play recordings at the hearing. Mr Henry responded that the recordings were included with the review application in the form of a CD and were referred to in the application. Professor Light submitted that the recordings, played in a quiet room through two hi-fi speakers pointing directly at the Members, would give a misleading impression of noise in the street, and that there was sufficient evidence about sound levels in the acoustics report. He had not had the opportunity to hear the recordings before their submission in evidence. Following advice from the Senior Legal Adviser, the Chair ruled that the recordings would be heard.

Mr Henry played a series of recordings made in the same premises, and indicated the date and time on which each was made. In response to a question from Professor Light, Mr Henry said that he did not know whether secondary glazing was fitted in the premises.

Mr Henry continued his summary of the history of complaints about the premises and the response of Environmental Protection to them. He then referred to the additional report he had submitted after two visits he had made to the vicinity of the premises, on 6th and 8th May 2011 respectively. This report stated that the premises had continued to trade after the terminal hour on both days. He believed that the single door supervisor, present on the second visit, had been largely ineffectual in controlling noise from patrons. He also observed that notices to patrons were already displayed at the premises, with no discernible effect. He referred to information posted on the Department of Culture, Media and Sport's website, which states:

“Including late night take-aways and fast-food outlets in the Act extends the licensing regime which previously operated in most of London to all of England and Wales. It was felt this was necessary to protect local residents because premises which serve late night refreshment can be used by customers who may have been drinking at other premises earlier in the evening, thereby creating the potential for disorder on and near the premises. Also, because large numbers of customers may gather at places serving late night refreshments, there is a potential for nuisance and disturbance for local residents.”

Mr Henry submitted that it was clear that the nuisance complained of was directly attributable to Bodrum. His observations in Broad Street had shown that noise from people passing along the street was transient, whereas patrons of Bodrum lingered outside the premises for thirty minutes or more. In response to a question from the Chair he confirmed that he had made a total of six visits to the premises, four before the adjournment and twice after.

Professor Light referred to paragraph 10 of Mr Henry's report, which gave information about his visit of 8 May 2011, and contested its accuracy, stating that there was a discrepancy between the times stated for the sale of hot food and when the premises closed. He said that a CCTV recording made at the premises (which was not produced at the hearing) showed this to be the case. Mr Henry said that he could not explain this apparent discrepancy. Professor Light also asked questions in relation to the closure of the premises, and stated that the door of the premises might well have been open some time after the terminal hour to give access to cleaners.

He asked whether any complaints about the premises, which had traded for fifteen years, had been received before July 2010. Mr Henry replied that as far as he knew there had not. Professor Light asked whether the bedroom in the premises where the recordings were made was on the street side. Mr Henry replied that it was not, but it did have a view onto the street. He agreed that noise on the street would not be directly outside the bedroom window. Professor Light asked whether it was correct that the sound of a window being opened could be heard in one of the recordings. Mr Henry agreed this was so. Professor Light expressed surprise that Mr Henry had not

mentioned whether the windows were open or closed when the recordings were made as this was a vital piece of information when assessing the level of noise in the premises. Professor Light asked Mr Henry whether there would be noise on the street if Bodrum were not there. Mr Henry referred to his previous submission that noise from passers-by was transient. Professor Light suggested that Environmental Protection had been too precipitate in bringing an application for review, given that no complaints about the premises had been received before July 2010 and there had been a five-month gap, before the second complaint. He stated that, despite this, Environmental Protection had already referred to the possibility of a review in correspondence written in February 2011. He asked whether any help and advice had been given to Bodrum. Mr Henry replied that he did not know what help could be offered. In his view there had been no improvement in levels of nuisance associated with the premises since the adjournment and the use of door staff had been tested and been shown to be ineffectual. Professor Light asked Mr Henry about the Dispersal Policy. Mr Henry said that he thought it was a good idea, but he was not sure how effective it would be. Professor Light asked whether the notices were a good idea. Mr Henry said that he did not know.

Mr Del-Greco gave his evidence. He said that he had lived in his flat for the past five or six years and had now run out of patience because of the disturbance that patrons of Bodrum caused him. The fact that other residents did not complain did not mean that they did not suffer disturbance. He had double glazing on some of his windows, but the noise still penetrated through the gaps. Noise travelled all around the area. He had expected some noise in a city centre location, but he had not expected that there would be noisy gangs of people lingering in the street for very long periods in the early hours.

The Chair asked whether there had been any reduction in levels of noise since the adjournment. Mr Del-Greco replied that there had not. He added that the period had not been typical because there had been fewer people in the City for various reasons.

PC Gemma Kirby summarised the additional information that had been submitted by the Police. Professor Light asked whether a single member of door staff would be sufficient, given the size of the premises. Mr Purchase said that a minimum of two allowed one to be absent on some occasions. Professor Light commented on the costs that the licence holder would incur if required to hire two door supervisors. He then asked whether it was true to say that the premises were not a crime hot spot. PC Kirby suggested the figures spoke for themselves; she had not been asked to provide comparative information for other premises. Professor Light suggested that the number of incidents linked to Bodrum during a period of six and a half weeks was not large. The Senior Legal Adviser asked why the report contained so much information about incidents not related to Bodrum. Mr Purchase replied that it was Police practice not to filter data about incidents, but to present it in full to give a balanced picture.

Mr Perkins stated the case for The Abbey Residents Association. He said that he did not wish to add to his representation, but would like to make some comments about the review process. He said that Interested Parties were constantly that the review process was their guarantee if there were adverse consequences arising from the grant of an application. However, the current review demonstrated how slow and

difficult the process was. Gathering evidence took a long time. He also felt that some people would be deterred from making representations because of a reluctance to be questioned in public. He urged Members to give full weight to the evidence that the premises gave rise to nuisance of a level that fell foul of the Licensing Act.

Professor Light stated the case for the licence holder. He said that the premises had first opened fifteen years ago and had attracted no complaints until July 2010. Complaints had only been made by the occupiers of newly-converted flats immediately opposite the premises; one representation to the review had been made by an occupier and one by a former occupier. He stated that this hardly suggested a significant level of concern among those living in the vicinity. Eight letters of support had been received by the licence holder. Broad Street was a thoroughfare. Public nuisance was not defined in the Licensing Act, though the Secretary of State's Guidance stated that it could include low-level nuisance affecting a few people living locally. He discussed the case of *R (on the application of HOPE & GLORY PUBLIC HOUSE LTD) (Claimant/Appellant) v CITY OF WESTMINSTER MAGISTRATES' COURT (Defendant) & LORD MAYOR & CITIZENS OF WESTMINSTER CITY (Interested Party/Respondent) [2011] EWCA Civ 31* in relation to public nuisance and submitted that there was no evidence of the same in relation to Bodrum.

He submitted that;

- the premises were located at the heart of the night-time economy in Bath
- the licence holder had made significant efforts since the adjournment
- the Dispersal Policy had been drafted and needed to be tested
- a door supervisor had been employed at the weekend
- it was true that Police had been called to the premises when a door supervisor had been assaulted by a patron
- the use of a door supervisor was an innovation and patrons needed time to become accustomed to his presence
- a flyer had been sent to all taxi companies asking them to advise drivers not to drop or pick up customers directly outside the premises and the Premises Licence Holder had stated that this would be enforced
- a notice had been displayed at the premises requesting patrons not to sit on the railings immediately outside the premises and an enquiry had been made to the Council about whether the railings could be removed
- a report had been commissioned from an independent acoustics expert

Professor Light challenged Mr Henry's contention that there had been no improvement since the adjournment, noting that Mr Henry had not visited the premises since 8 May 2011. He referred to the conclusions of the acoustic consultant in paragraph 1.6 of his report and his statement in paragraph 3.5 that the

vast majority of incidents in Broad Street that occurred during the survey period were entirely unrelated to Bodrum. Professor Light also made comments on the planning permission for the conversion of the flats opposite the premises and the fact that it was the residents of these flats who had made complaints. He stated that the Licence Holder was offering to pay for secondary glazing to be installed in these flats. He submitted that there were significant discrepancies in Mr Henry's evidence.

Replying to questions from Members, the following information was given by Professor Light and Ms Kolcak:

- the acoustics survey related only to a single evening, but had been done by a nationally-renowned acoustics consultant
- only one door supervisor had been employed because of the need to control costs
- the area covered by the CCTV cameras in Bodrum was the opposite side of the street, seven shops down to the left and a little less to the right
- the CCTV system was regularly serviced by an IT engineer and was checked shortly before 8 May 2011.

A Member expressed concern at the comment in the Police log on page 91 of the agenda that staff were "not forthcoming with information" after officers had attended the premises in response to a call from a member of staff. Ms Kolcak explained that the incident had occurred on Christmas Eve, when staff had been instructed to contact the Police in the event of trouble; she was unable to throw any light on the comment.

The Premises Licence Holder had submitted a flyer which had been sent to taxi companies requesting that no customers were picked up directly outside. A Member asked when this had been sent out. Ms Kolcak confirmed that it had been sent to taxi firms about a week and a half before the hearing. The Member suggested that the flyer would be ineffective, because taxis were legally obliged to take the most direct route. Ms Kolcak replied that the flyer did not ask taxis not to go to Bodrum, but merely to stop a short distance away.

A Member asked Ms Kolcak about the statement in the late report submitted by the Police that Inspector Mildren had spoken to Mr Kolcak on 21st April 2011 and suggested to him that he arrange a meeting with the Police and Environmental Protection and that Mr Kolcak had not done so. Ms Kolcak replied that Inspector Mildren had called at the premises when a delivery was being made and that her father had been preoccupied with this and did not register that there was anything significant in what Inspector Mildren had said. Inspector Mildren confirmed that a delivery had been taking place when he was at the premises. He had been passing the Premises and had called in as a courtesy. He told Mr Kolcak that he was available if he wanted to discuss anything in relation to the Premises.

Replying to a question from the Chair, Ms Kolcak said the current hours for late night refreshment had applied since the licence was granted in 2005.

The Chair referred to the amended table 4541/T3 to the report by RBA acoustics and asked Mr Henry to comment on the difference between his figure for the percentage of people passing along Broad Street who called at Bodrum (65%) from that derivable from the table (about 25%). Mr Henry said that RBA only surveyed on one evening and only counted people for 15 minutes in the hour, whereas he had visited the premises on six occasions.

Mr Henry said that Professor Light had laid great emphasis on the fact that the complaints had come from residents of the new flats. It was, however, no defence to nuisance that those complaining had moved into an area where that nuisance was already occurring. Professor Light countered that the nature of an area was relevant when considering what was reasonable in that area. Mr Henry said that Broad Street was generally quiet in the early hours apart from the nuisance associated with Bodrum. He submitted that the acoustics report was irrelevant, because there were no objective standards for the level of noise that constituted nuisance. Professor Light, however, submitted that the acoustics report gave objective data which allowed comparison with the standards of Planning Policy Guidance 24 ("PPG24").

Mr Henry asked how the door supervisor would handle a queue of fifteen people. Professor Light said that the management would try to prevent queues and that the door supervisor would exercise his professional skills.

Mr Henry said that he had recently contacted Highways and they had said that they had had no contact with Bodrum about the removal of the railings outside the premises. Ms Kolcak said that Highways had been contacted about two and a half weeks ago.

Mr Perkins asked if the Dispersal Policy was being put forward as a possible licence condition. Professor Light confirmed that this would be a good idea.

The Chair invited the parties to sum up.

Mr Purchase said that the Police had nothing to add.

Mr Henry said that he had only received the acoustics report that morning. He did not accept its conclusions; he had visited the premises six times, but the acoustics consultant had only visited them once. He observed that PPG24 applied to noise from traffic, not noise from people. After witnessing the difficulties the door supervisor had had controlling patrons, he thought that it was doubtful that the dispersal policy would be effective. He considered that the nuisance associated with Bodrum had had a significant impact on residents, especially because it was occurring at such a late hour. He believed that taxis would continue to call at the premises in the absence of any means of preventing them from doing so. He did not think it would be possible to prevent patrons from sitting on the railings. Their behaviour was less restrained because they had been drinking. He submitted that the licence holder had not shown respect for the licensing regime, which was further evidenced by his failure to reduce nuisance during the period since the adjournment.

Professor Light said that the licence holder denied that he had traded beyond his permitted hours; it had already been shown that Mr Henry was wrong about this with respect to 8 May 2011. The premises had traded for fifteen years yet there had been

no complaints about it from residents until July 2010. He submitted that the recordings had not demonstrated a significant level of noise. The loudest noise in one of them was a voice saying "it's very noisy. I can't hear anything else." In his opinion the level of external noise was insignificant, yet the occupier of the flat where the recordings had been made had certified that they were representative of the nuisance that she regularly suffered. In one of the recordings there was the sound of a window being opened. It had been established that the noise was not occurring under the bedroom window of the complainant. He conceded that the licence holder needed to regulate the premises better, and this was exactly what he was trying to do. To this end, he would accept that the Dispersal Policy should be imposed as a condition of the licence. He would accept a condition to employ one door supervisor on Fridays and Saturdays, but not two, as this would be uneconomic. He suggested that the licence holder should be encouraged to continue negotiations with taxi firms and with the Council about the removal of the railings or the placing of a sign on them. He suggested that Environmental Protection had focussed on gathering evidence for a review rather than on negotiating to improve the situation, and that a graduated approach should have been adopted to resolve the issues. He conceded that the acoustics report related to a single evening, but it had been put together by an accredited professional. It was possible that noise levels had actually improved by 14 May 2011 when the acoustics survey was carried out.

He submitted that the Premises Licence Holder was willing to work with Environmental Protection and residents and was offering to pay for secondary glazing for the new flats. He stated that the situation had not reached a point which justified the drastic action of reducing the trading hours of the premises. The current proposals were a way forward; if this was unsuccessful then another application for review could be made

Following an adjournment, the Sub-Committee resolved to impose the following conditions on the licence:

- 1) The following Dispersal Policy shall be adhered to at all times that licensable activities are carried out. The Policy shall include the following:
 - a) Instructions will be given to Door Supervisors to ensure that they comply with procedure outlined here and with the aims of this policy, namely to use their best endeavours to ensure that persons are not permitted to queue or loiter outside the premises, or otherwise cause unnecessary disturbance to residents and businesses whilst visiting the premises.
 - b) Persons who do not behave or adhere to the standards set out in this policy will be refused service.
 - c) Staff will be trained to ask customers to leave quietly and respect our neighbours.
 - d) CCTV monitoring is in place outside the premises for effective monitoring of customers. The Management will regularly review the CCTV images to ensure that this procedure is being adhered to.

- e) Signage will be put in place to inform persons that they are required to leave the premises quietly and that no vehicles should be parked directly outside the premises. Service will be refused to those who do not follow these instructions.
 - f) Subject to local authority approval, during the hours of 00.00 midnight until 04.00 on Friday and Saturday evenings, signs will be placed on the barriers outside the premises asking that persons do not sit on these barriers and that they leave straight away after making their purchase.
 - g) The Management shall communicate in writing with local taxi firms on a regular basis to request that the setting down or collecting of passengers outside the premises is discouraged.
2. There will be at least one door supervisor on duty at the premises on Friday and Saturday from 23.00 hours to closing time.
3. Signs will be prominently displayed at the premises to read:-
- a) Do not book taxis from here use the ranks
 - b) Please do not sit on the railings
 - c) Please leave quietly respect our neighbours

REASONS

Members have today been asked to determine an application for the Review of a premises licence for Bodrum Takeaway, 34 Broad Street, Bath.

The determination of the application had been adjourned from a hearing held on 18 April 2011. The adjournment was granted in response to a request from the lawyer acting for the Premises Licence Holder as his client wished to have discussions with the parties in respect of the evidence that they had submitted. He also agreed to trial a condition, proposed by the Police, to use Door Supervisors on Friday and Saturday nights from 23.00 to close.

Members are aware that the proper approach under the Licensing Act is to only do what is necessary and proportionate to promote the licensing objectives in light of what is presented to them.

Members listened carefully to the applicant and took account of the representations from the Interested Parties and those of the Responsible Authority and Premises Licence Holder. They also considered the additional information submitted by the applicant and the Premises Licence Holder who had provided a noise acoustic report. The Members were careful to balance the competing interests of the parties in reaching a decision.

Members noted that the basis of the application was that patrons attending the premises as a result of the licensable activity of the provision of late night refreshment caused noise nuisance, disturbance and behaved in an anti-social manner which significantly increased after 02.00 hours on a Friday and Saturday night. In particular the evidence related to noise nuisance and disturbance caused by customers of Bodrum Takeaway when queuing to enter the premises, in the premises itself, when seated on the railings immediately outside, when customers left the premises and incidents of urination and littering affecting near residential premises. They attached considerable weight to this evidence.

Members also noted that the Premises Licence Holder had provided a book containing signatures from customers which purported to be in support of the premises, and some letters of support. They did not attach any weight to these documents as they were not relevant representations under the Licensing Act 2003.

Members noted the findings of the acoustic report and that the survey undertaken had been carried out on one night only. They attached some weight to this but noted that, as it only related to one night, it was not sufficiently indicative so as to cause them to attach more weight to it.

Members also considered the late additional information provided by the Premises Licence Holder. This included a Dispersal Policy, signage asking customers to leave quietly and to respect the neighbourhood, not to sit on the railings immediately outside of the premises, and to book taxis away from the premises.

They also acknowledged the case of *R (on the application of HOPE & GLORY PUBLIC HOUSE LTD) (Claimant/Appellant) v CITY OF WESTMINSTER MAGISTRATES' COURT (Defendant) & LORD MAYOR & CITIZENS OF WESTMINSTER CITY (Interested Party/Respondent) [2011] EWCA Civ 31*; and in particular paragraph 42 of the Judgement. They considered that the public nuisance experienced by those residents who had provided evidence was not reasonably acceptable in that location.

In determining the application Members found the premises is situated on a through route with passing vehicular and pedestrian traffic. They found merit in the review application and acknowledged that one of the key aims of the Licensing Act 2003 is to protect residents whose lives can be disturbed by people visiting licenced premises.

They therefore imposed the conditions on the Premises Licence which were proposed by the Premises Licence Holder. They considered that the imposition of the conditions was necessary in order to promote the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder. They considered that there was evidence to show that there was an increase in noise nuisance, disturbance and anti social behaviour between the hours of 02.00 and 04.00 on a Friday and Saturday night, which could be directly attributed to the licensable activity of the provision of late night refreshment at the premises and that the modifications they had imposed would alleviate those problems being experienced by residents.

The meeting ended at 2.35 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services