

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **LICENSING SUB-COMMITTEE**

Tuesday, 29th April, 2014, 10.00 am

**Councillors:** Manda Rigby (Chair), Patrick Anketell-Jones and Gerry Curran

**Officers in attendance:** Enfys Hughes, Alan Bartlett (Principal Public Protection Officer), Kirsty Morgan (Public Protection Officer) and Shaine Lewis (Principal Solicitor)

#### **137 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **138 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies were received from Roger Symonds, Councillor Gerry Curran was his substitute and Anthony Clarke, Councillor Patrick Anketell-Jones was his substitute.

#### **139 DECLARATIONS OF INTEREST**

Councillor Manda Rigby declared an interest in Roscoff Deli as she was a frequent customer. Therefore this item would be deferred to a future meeting.

#### **140 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **141 MINUTES: 7TH APRIL 2014**

**RESOLVED** that the minutes of the meeting on 7th April 2014 be approved as a correct record and be signed by the (Chairperson).

#### **142 LICENSING PROCEDURE: LICENSING ACT 2003: VARIATION OF PREMISES LICENCE**

**RESOLVED** that the procedure for the meeting be noted.

#### **143 APPLICATION TO VARY THE PREMISES LICENCE FOR THE NEST, 7 BLADUD BUILDINGS, BATH BA1 5LS**

The Sub-Committee considered the report which sought determination of an application for the variation of an existing Premises Licence under Section 34 of the Licensing Act 2003 in respect of The Nest.

Attendance List -

#### **Applicant:**

Jeremy Phillips (Francis Taylor Buildings) - representing applicant

Walaiti Rathore (Fraser Brown) - representing applicant

Rod Johnson (Licensee and witness)

Max Johnson (Licensee and witness)

Paul Douglas (witness)

**Representations:**

Avon and Somerset Constabulary - Inspector Steve Mildren and PC Chris Leadbeater

Environmental Health Agency - Nigel Shire

TARA and CARA Residents Association

Ian Perkins and Sally Rothwell and witnesses - Helen Ashman, John Dixon, Clair Rosier.

The Public Protection Officer presented the report, outlined the variation and the representations received.

Jeremy Phillips representing the applicant, put the case, asked questions of the licensees and made the following points:-

- the premises were in the cumulative impact area (CIA) therefore there was a presumption of refusal;
- the licence holders were local to Bath and had been involved with licensed premises for a long time;
- the style of operation was that of a community nightclub with the facility for live bands, working with the local universities, Art Exhibitions, fundraising and workshops for young musicians, the nightclub was not just a commercial enterprise;
- there was free entrance to the nightclub;
- the majority of crimes associated with the club were mobile phone thefts;
- the licensee had made their mobile phone numbers available to local residents and maintained an incident book;
- the extended hour would relieve some pressure on people departing from the club;
- during the previous year they had used 12 Temporary Event Notices (TENs) with extended hours and this year had used 4, the evidence was that there was a more gradual exodus of people and on one occasion though the notice was until 0400am the club had actually closed at 0330 as everyone had left;
- with regard to drug taking the club had liaised with the police and removed shelving in the toilets, had 15 minute checks of the toilets (both male and female) and had female staff in the female toilets;
- they no longer allowed re-entry to the club after 0200am and shut the smoking area earlier;
- the CCTV had previously not been up to specification but had all been checked and was in line with the police recommendations;
- the following proposed conditions were outlined:-

- Checks of the male and female toilets on Friday and Saturday nights
- A log book to be maintained
- Signage that drugs checks would take place and there was zero tolerance of drugs on the premises
- Signage of the 'Challenge 21' policy
- No entry or re-entry to the club after 02.00am
- the smoking area to close at 02.00am
- Signage that patrons should respect the local residents
- Join the Pub Watch Scheme
- After consultation with the police the club would have a written dispersal policy for Friday and Saturday nights
- A minimum of 2 door staff from 11pm on Friday and Saturday nights
- A noise limiter set by Environmental Health, to be secured thereafter so that it could not be tampered with
- Restrict live music until 11.00pm
- The Designated Premises Supervisor's (DPS) telephone number to be made available to local residents, the number to be manned at all times
- The DPS to attend a quarterly meeting of the residents association if invited
- To delete the condition relating to the door staff having to wear fluorescent jackets

Mr Douglas was brought as a witness. Notification of this witness and details of his evidence was submitted to the Licensing Authority after the usual 5 working days' notice, however the information was circulated to all parties before the hearing. The Legal Adviser stated that there was discretion to allow such information to be heard but not an automatic exclusion. With the Sub-Committee's agreement Mr Douglas made the following points:-

- He had observed the premises on Easter Saturday outside the residents premises;
- 98% of the noise was from traffic;
- there was lots of pedestrian movement past the premises which was also used as a short cut;
- there was a good atmosphere in the city with no aggression or violence and no males urinating;
- people had taken 28 minutes to leave the club;
- he believed that granting the extra hour would not add to any issues.

#### Councillor questions

The following responses were given to councillor questions:-

- the average age of the clientele had gone up in the last 5 years to around 25 years;
- on his evidence Mr Douglas did not think people leaving the club impacted on residents;
- there were problems previously for residents living above the premises, this no longer existed as the club had installed a sound ceiling and the previous club was a rave club with DJs;

- hi viz jackets had been necessary for the CCTV which was previously black and white, so hi viz showed up;
- in respect of the premises being in the CIA, the 14 additional conditions would address the issues raised - drug taking, Challenge 21, no re-entry, closing the smoking area early, Pub Watch, dispersal policy, making telephone numbers available and attending residents meetings;
- the Legal Adviser clarified that a trial period could not be imposed the conditions must be permanent;
- with regard to the club being a community club and the benefit to the community of extending the hours, the response was that the community was disadvantaged as the club currently closed earlier than others in Bath so was at a disadvantage and they wished to compete commercially on a level playing field.

#### Question from other parties

The following responses were given:-

- Mr Douglas had also stood near the residents properties and stated that music could only be heard from the club when the doors opened;
- the traffic noise seemed constant with lots of taxis;
- the conditions could only be imposed if the variation in hours was granted;
- Mr Douglas only observed the premises on one occasion.

#### Other parties cases - TARA and CARA

Ian Perkins stated that they had mobile phone footage of the club available to the meeting. Following legal advice this information was not allowed to be seen.

The followings points were made:-

Ian Perkins

- a lot of work had taken place to improve the George Street area but this club had not improved and was poorly managed;
- Mr Douglas had observed the club on Easter Saturday when most of the students were back home.

Helen Ashman

- previously the club had not been open on so many nights but by October 2013 she had had enough so complained to Environmental Health;
- audio meters had been installed and initially the noise from music had improved but then the limiters had been tampered with and noise had increased again;
- the noise from live bands was worse with loud drum and bass which could be heard from the basement;
- crowd noise was heard from the front of the property and previously their front door had been blocked;
- they could not open their windows due to the noise and smoking;

- the door staff were not very efficient in encouraging the crowds to leave on closing with many hanging around outside the club and spilling onto the busy road outside;
- other clubs seemed to control dispersal better;
- this happened most days bar Sundays;
- there was a general lack of respect for residents.

John Dixon

- lived near the cross roads where many people would pass on the way home from various clubs;
- the problem was antisocial behaviour including clearing up vomit, broken glass, a number of assaults, a rape and extreme noise;
- the problems had worsened in the last two years;
- to extend the hour would only increase the problems.

Clair Rosier

- lived in pedestrian street so there was no traffic noise;
- problems included drinking alcohol on the street, dropping litter, damage to property, antisocial behaviour, drug dealing and prostitution;
- her children would not be allowed to see such things at the cinema yet could see them outside their bedroom window;
- traffic noise died down after 12 bar taxis;
- the issue was not traffic it was the crowds and music.

### Questions

The following responses were given to questions:-

- the level of noise from the club depended on the performance, with live music often the sound checks could be heard around 7pm and music could be heard through the walls of the building;
- I don't mind the club being there but they should respect the residents;
- the reason the club was popular was that the entrance was free;
- now work had been done at Zero Zero that club was better run and at Moles there was more of a dialogue with local residents;
- the video footage showed that the Nest doorstaff could not manage the crowds outside, people walk into the busy road and people walk off carrying drinks, this gave a feeling that the management do not care;
- Mr Douglas's observations were not on a typical night;
- even with a 24 hour licence people still leave en masse when it was closing time, so to extend by an hour would just mean people would leave en masse at 0300am;
- if the doorstaff no longer have to wear hi viz jackets it will be hard to tell who they are;
- the licensee stated that the club was full on Easter Saturday and were not completely reliant on students as customers;

- the improvements at Zero Zero were as a result of the conditions on their licence;
- the improvements at Moles were due to a change in proprietor who had a more concerned attitude towards local residents and had regular discussions to ameliorate problems;
- the dispersal from the club needed to be more efficient;
- previously the residents had contact details for the licensee but had had no meeting and the problems continued;
- one resident who lived a little further away said the problems arose from all licensed premises he could not be specific, but the noise that disturbed him inside was the crowds not traffic.

### Avon and Somerset Constabulary

Steve Mildren stated that the premises was in the CIA along with other premises. When there had been issues with noise and he had discussions with the licensees they were always forthcoming. There had previously been a breach in respect of the CCTV but this was now compliant. He added that the management had engaged with the police but there needed to be a period to see if the current changes were working.

PC Leadbeater read out the crime figures recorded with The Nest as the location, there were 27 offences, including 15 thefts and 11 violence against a person. The peak was Saturday between 1200 - 0300 hours. These figures were higher than similar places. They had carried out drug swabs with higher than usual readings in the toilets, on a table on the dance floor, the bar and stairwell, in November and January. He noted that there were baseline readings in most similar premises. He deduced that The Nest caused more of a resource demand on the police than its peers.

### Questions

The following points were made in response to questions:-

- This club was worse than others in the area eg Zero Zero and Moles;
- Zero Zero closed around 0300-0400 and Moles about 0400;
- it would be more helpful for the applicant to have more details in relation to the crime figures;
- the police stated that they had to consider Data Protection;
- the impact of the extra hour would be to push back the nuisance, crime and disorder and antisocial behaviour to a later time.

### Environmental Health - Nigel Shire

Mr Shire explained that he had been involved with the owners and management of the Nest and local residents. Noise monitoring equipment in resident's properties had revealed nuisance noise levels from music playing at the premises. He said that there had been some improvement when limiters were independently installed but after approximately 3 weeks they had received more complaints so the limiters had proved ineffective for a long term sustainable solution. It was suggested that the limiters be set in conjunction with Environmental Protection officers, whilst gaining

access to the nearest noise sensitive premises and once set there should be limited access to only the management. This has yet to be proved as a solution.

### Questions

In response to questions the following points were made:-

- the noise levels were not sufficient to be a statutory nuisance as defined by the Environmental Protection Act 1990, but did indicate a breach of a condition attached to the premises licence;
- the improvement had only been for a short period;
- when the TENs had been used there had been no observations of the dispersal being more gradual;
- Mr Douglas's evidence was that it had taken half hour for crowds to disperse;
- the doorstaff were ineffective in controlling the noise;
- environmental health had not objected to any of the TENs;
- more conditions would be a good thing but they needed to be tested over time.

### Summing up

#### Ian Perkins

The Sub-Committee had heard from residents and some who could not attend, that this premises caused them misery. Having looked at the survey area which had improved, this premises had not. If there was an extension it would just push the current problems back an hour. The local people affected did not suffer from traffic noise.

Mr Perkins was concerned by the applicants offering conditions which could not be implemented unless the variation was granted. Many of the conditions were good practice and should be happening anyway. The applicants had failed to make a compelling case.

#### Avon and Somerset Constabulary

Steve Mildren was heartened by his discussions with the management of the premises and had no doubt of their good intentions. However in the CIA and from the figures an additional hour would have an adverse impact on the local community.

#### Applicant summing up

Mr Phillips stated that the presumption was against the applicant, however they had demonstrated that the issues had been addressed. The police evidence was unacceptable to make an objection with no specific evidence and detail and they had not objected to any of the TENs. The Environmental Health Officer had said the operators were helpful and had not objected to the TENs. Evidence from the licensee when the TENs were used was there was a more gradual exit and the club had closed earlier. If there were conditions these could be actively enforced.

The applicant had sympathy for the residents but the problems were the cumulative impact of a number of premises. The conditions were specific and targeted and would make a significant difference. When Zero Zero had conditions imposed there had been a huge difference and with Moles regular meetings had improved the situation. The variation was a small increase of one hour plus the conditions would improve the situation and make a massive difference.

Following an adjournment it was

**RESOLVED** that the application for the variation of an existing premises licence at The Nest be refused.

#### Reasons for decision

Members have today determined an application to vary a premises licence at The Nest, Bladud Buildings, Bath. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy and the Human Rights Act 1998.

Members were aware that the proper approach under the Licensing Act was to be reluctant to regulate in the absence of evidence and must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information put before them. In this case, however, Members noted that the premises are situated in the Cumulative Impact Area and accordingly as the council has a Cumulative Impact Policy a rebuttable presumption was raised that such applications should be refused unless the applicant demonstrates that the variation if granted would not undermine the licensing objective and add to the Cumulative Impact being experienced.

In reaching a decision Members were careful to take account of all the relevant oral and written representations and were careful to balance the competing interests of the applicant, interested parties and responsible authorities.

The police stated they had concerns regarding drug use, drunkenness and anti-social behaviour at and in the vicinity of the premises. The police produced evidence in the form of incident logs which recorded initial contact with complainants given as in the location of The Nest. Police stated there had been 27 recorded crimes in the locality of the Nest mostly mobile phone incidents but 11 allegations of violence against the person. Police further stated there had been positive drug swab tests taken at the premises some of which were quite high readings. The police stated that these concerns had been raised with the premises management and to a certain extent the premises had improved and were always been happy to engage. However, as the steps had only been put in place very recently the application was premature and overly ambitious at this stage. .

The Environmental Health Officer stated there were complaints of noise from music and patrons at and in the vicinity of the premises. The Officer stated that whilst the noise had not currently been determined as a statutory nuisance it did cause nuisance.

Residents stated the area around the premises is residential with a number of noise sensitive properties nearby. They stated The Nest shines out as not having



benefited from the improvements associated with other premises in the area and stated customers were attracted to The Nest because it was free to enter. They also stated noise had increased and they experience problems with drunken patrons outside. Around the Hay Hill area it was stated that there are incidents of urination, vomit, broken glass and fighting and should this application be granted this would only lead to an increase in the crime, disorder and anti-social behaviour.

The applicant stated they provide a community night club, a facility for up and coming bands, art exhibitions and they worked with the University. They also stated they have a live music work shop on Broad Street introducing children to live musical instruments.

The majority of crime at the premises was lost or stolen telephones and these were reported for insurance claim purposes. Local residents have had very little contact with management in relation to crime and disorder or complaint and managers are happy to make telephone numbers available so people can contact them. Whilst an incident book was maintained it was stated opening later would have a better impact on dispersal in the area and this was evidenced by their use of the maximum number of TENS. They stated that the conditions suggested in the operating schedule and offered by them this morning would address any concerns about Cumulative Impact and whilst noting the police representations the police did accept there been some improvement and had not produced any evidence directly attributable to the premises.

The application was refused as Members considered the suggested conditions or any additional conditions would be ineffective in ensuring the premises would not have a detrimental effect on the licensing objectives. This is because the dispersal policy referred to had not as yet been drafted and the applicant could not demonstrate going forward that its current dispersal methods were sufficient to ensure streets would not be flooded with patrons on closure if granted causing nuisance, crime and disorder. This was particularly relevant as the proposed closing time would coincide with other premises in the area.

Whilst members welcome the progress the premises have made the premises are nevertheless situated in a crime and disorder hot spot. Moreover, it was also noticeable that the majority of the steps taken were taken during the application process and are still on-going. In the circumstances, and given the levels of crime and disorder already associated with the area and evidenced by police and residents today, members found the application premature and the premises somewhat a work in progress. Members therefore found until a full programme of steps has been formalised and implemented, extended hours at this time would undermine the licensing objectives, add to cumulative impact and further conditions in these circumstances would not mitigate any detrimental impact the premises had on the area.

#### **144 LICENSING PROCEDURE - MISCELLANEOUS**

**RESOLVED** that the procedure for the meeting be noted.

#### **145 APPLICATION FOR PERMISSION TO PROVIDE FACILITIES ON THE HIGHWAY FOR RECREATION/REFRESHMENT AT THE PORTER, 2 MILES'S BUILDINGS BATH BA1 2QS**

The Sub-Committee considered a report which sought permission to provide facilities on the highway in respect of The Porter.

The applicant was present and the objectors Sally Rothwell, Ian Perkins and Councillor Brian Webber were also present.

The Public Protection Officer presented the report and explained that permission was sought for 16 tables with appropriate seating (the same number as last year) and three planters outside the basement entrance.

The applicant put his case and confirmed the only change was the three planters by the basement entrance. The numbers of tables had been reduced last year and he had received no further complaints. His employees started work each day with a checklist of things to do and further problems had been eradicated. The lower pavement tended to be used for wheelie bins. There had been no objection from highways.

Questions followed and the applicant confirmed that the lower entrance was very crowded on Thursday/Friday/Saturday. There were barriers in front of the entrance and a doorman. They encouraged smokers to use the upper pavement. The number of tables applied for was confirmed as 16. With regard to affecting residential amenity the applicant stated that there were no residents above the premises. He ensured the area was kept tidy and they were very child friendly.

#### Objectors case

Sally Rothwell stated that the Porter had improved greatly since the new owner. However the tables were sometimes put out earlier and left out later. the pavement was very narrow and there was an A board so sometimes people had to step into the road which was busy. The tables and chairs at the front of the premises caused a real problem and the planters would cause a problem on the lower pavement due to the large numbers using the lower entrance and it was an accident waiting to happen.

Ian Perkins confirmed that the Porter was better run than previously. He had been pleased when Moles had stopped using the lower entrance which was opposite his property. The traffic came round very fast at that point and to have planters would reduce the space which was already limited, as there were already problems there.

Councillor Brian Webber stated that he objected to the tables and chairs on the upper pavement at the front of the premises. He liked the 'cafe society' however the owners had to consider the pedestrian traffic. He was aware there was no highways objection. George Street was very busy with little space to move and at that point there was also the restriction by the railings.

#### Summing up

The objectors briefly summed up their cases.

The applicant stated that the tables and chairs were stacked ready to put out at the appointed times. He was aware that Moles had changed the entrance but since he

had taken over barriers were now used to help the situation. the planters did not take up much room and there had been no highways objection.

The Legal Adviser stated that the Sub-Committee should consider the application in highway terms and whether there was an obstruction, hazard or nuisance caused. Amenity was a planning issue.

Following an adjournment it was

**RESOLVED** that the application for permission to provide facilities on the highway in respect of The Porter - be granted in respect of the tables and chairs and be refused in respect of the three planters.

Reasons for decision

Members have determined an application to place 16 tables with appropriate seating, boundary markers and 3 planters on the highway. In doing so they took account of the Highways Act and balanced the representations from objectors against the application and its background.

Members noted the application was a renewal of the tables, chairs and boundary markers to the front and side of the premises together with 3 planters on the highway outside the premises' basement entrance. In reaching a determination members had to decide whether the application was likely to obstruct the free passage of pedestrians, cause a public nuisance in highway terms or be a hazard in its real sense.

Objectors accepted the premises were an improvement in the area. However, they stated the pavement was narrow and the use of the tables caused noise and nuisance issues. Members noted that the use of the existing permit had not been subject of complaint or incident and no objection to the application had been made by the Highways Authority.

In all the circumstances therefore members considered that, as there had been no material change in the table, chair and boundary marker application this would be granted. The matter therefore falls to be decided on 3 planters. Members considered that the planters in this area, whilst they might tidy up the look of the area, were likely to be hazardous in highway terms as people might have cause to step into a live carriage way at busy periods. Accordingly this part of the application was refused.

**146 APPLICATION FOR PERMISSION TO PROVIDE FACILITIES ON THE HIGHWAY FOR RECREATION/REFRESHMENT AT; ROSCOFF DELI, 18 NORTHUMBERLAND PLACE, BATH BA1 5AR**

Councillor Manda Rigby declared an interest in this item as she was a frequent customer. Therefore this item was deferred until a future meeting.

The meeting ended at 1.42 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**