

## **BATH AND NORTH EAST SOMERSET**

### **LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE**

Tuesday, 12th October, 2010

**Present:-** Councillors:- Tim Warren (Chair), Gabriel Batt and Gerry Curran

**Also in attendance:** Emma Stoneman (Licensing Officer), Terrill Wolyn (Licensing Officer), Shaine Lewis (Senior Legal Adviser) and Sean O'Neill (Democratic Services Officer)

#### **1 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer 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 MINUTES: THURSDAY, 16TH SEPTEMBER 2010**

As no member was present who had been present at the meeting of 16<sup>th</sup> September 2010, the approval of the minutes was deferred until the next meeting.

#### **7 LICENSING PROCEDURE**

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

#### **8 APPLICATION FOR A PREMISES LICENCE FOR ADEL'S TAKEAWAY AND CAFE, 34 SHAFTESBURY ROAD, OLDFIELD PARK, BATH BA2 3LJ**

Applicant: Amar Sharfadeen

Interested Parties were present, but they had requested anonymity and did not add to their written representations.

The Licensing Officer summarised the application. The applicant was seeking to provide late-night refreshment between 23.00 and 01.00 on Mondays to Thursdays,

between 23.00 and 03.00 on Fridays and Saturdays and between 23.00 and 00.00 on Sundays. Representations had been received from local residents and from the Ward Councillor (Cllr Will Sandry) in respect of the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

The applicant was not present and was not represented. Cllr Will Sandry was unable to attend the meeting. Other Interested Parties were present, but did not wish to add to their representations.

Following an adjournment it was **RESOLVED** to grant a licence allowing the provision of late-night refreshment between 23.00 and 00.00 on Fridays and Saturdays only. Authorisation was delegated to the Licensing Officer accordingly.

## **REASONS**

Members determined an application for a premises licence at Adel's Takeaway and Café. In so doing Members had regard to the Licensing Act, the Hearings Regulations and Human Rights Act. In determining the application Members balanced the competing interests and granted the licence limited to Friday and Saturday 23.00 – 00.00 hours believing to grant a licence for any extended period would give rise to public nuisance in the form of noise in what is a premise on the edge of a residential area.

## **9 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.

## **10 APPLICATION FOR A REVIEW OF A PREMISES LICENCE FOR OPA BATH LTD, 14 NORTH PARADE, BATH BA2 4AJ**

Applicant for Review: Georgian House (Bath) Management Company, represented by Toby Brett

Witness for the Applicant for Review: Richard Collins (tenant of Georgian House), Dr Barbara White (Advanced Studies in England)

Licence Holder: Opa Bath Ltd, represented by Mark Hoare (Solicitor) and Mike Miaris

Interested Parties: The Abbey Residents Association, represented by Ian Perkins, Louise Henderson and Jenny Collins (local residents) and Graham Webb, attending on behalf of St. John's Hospital.

Responsible Authority: Environmental Protection, represented by Diarmid Henry (Environmental Health Officer)

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

The Licensing Officer summarised the application, which was based on the licensing objective of the prevention of public nuisance. Relevant representations had been

received from persons living and carrying on a business in the vicinity of the premises and from Environmental Protection.

Additional information had been circulated to Members and the parties before the hearing, including CCTV recordings of the street outside the premises and a letter from the occupier of a flat let by Advanced Studies in England.

Mr Brett introduced himself as Director of the Georgian House (Bath) Management Company and gave a PowerPoint presentation setting out the case for the Applicant for Review. He began by summarising the history of the premises licence. He also referred to planning applications made by the premises, including an application for change of use to a nightclub, which was refused in June 2010, and of interventions by enforcement agencies in relation to the premises, including a noise abatement notice made in October 2008. He said public nuisance was regularly caused by people queuing in the street while awaiting admission to Opa and by customers of Opa smoking in the street and when leaving the premises. Customers who had left Opa sometimes vomited and urinated in the street and in doorways. He showed CCTV footage of people congregating and moving around in the street near the premises, of a fight, which allegedly involved customers of Opa, and of a man, allegedly a customer of Opa, urinating in the street. Customers of Opa who came out to smoke huddled in the doorways of residential premises when it rained. All this activity took place not far from ground floor bedrooms and basement flats and caused nuisance and sleep disturbance to residents of Georgian House and neighbouring residential premises. He called Richard Collins as a witness.

Richard Collins stated that he occupied Flat 5 of Georgian House, which was on the first floor. He said that the noise from customers queuing to enter Opa prevented him from getting to sleep until 3.00am several nights a week. The people queuing were loud and excited because they had been drinking before they arrived. He felt that Opa was being operated as a nightclub in an area that was entirely unsuitable for such an establishment. He now felt that he was unable to allow his granddaughter to visit his flat because of the unpleasant atmosphere. He urged the Sub-Committee to reduce Opa's operating hours so that it could no longer operate as a nightclub.

Mr Brett said that he had wanted to call other tenants as witnesses, but they had said that they were too frightened to speak. He said that noise nuisance emanated from Opa's terrace. He referred to the noise log, which he as occupier of Flat 6 of Georgian Buildings had compiled. Following a review of its premises licence in October 2008, Opa had been required to close the lower terrace at 20.00 and the upper terrace at 23.00, yet customers were frequently on the terraces after these times, as recorded in his log. Opa's licence provided that music in the premises should not be audible in neighbouring properties, yet an independent acoustic survey had concluded that "the results of the monitoring exercise clearly indicate that noise from Opa within the noise sensitive properties is louder than acceptable and to adversely affect the amenity of the occupiers of the property". Mr Brett submitted that Opa was located in an area that was not suitable for a nightclub and that it should be required to close at 23.00.

Mr Brett called Dr Barbara White of Advanced Studies in England (ASE) as a witness. Dr White stated that ASE owned five flats in 14 North Parade. They were unable to let out Flat 1 because of noise nuisance from music from Opa and from its

customers in the street. They would not have let out Flat 2 had it not been for the fact that it provided good access for a disabled student. Students complained that they were unable to sleep because of the noise and that they felt intimidated when they returned to their lodgings by people in the street. The street was littered with cigarette ends and people urinated in the street. ASE had commissioned the independent noise study referred to by Mr Brett. She said that there had been a restaurant in the premises currently occupied by Opa for over twenty years, but problems had only started after Opa had started trading. She supported the proposal by the Applicant for Review for a terminal hour of 23.00 to be imposed on Opa.

Members put questions to Mr Brett.

Q. Did the two other licensed premises in North Parade contribute to public nuisance?

A. No. CCTV footage showed that customers leaving Opa headed back to the town centre and not to the end of the street where the other two premises were located.

Q. Was there any proof that the people in the CCTV clips were customers of Opa?

A. Yes, this was apparent in the full CCTV footage.

Mr Hoare and Mr Miaris put questions to Mr Brett.

Q. Had there not been four nightclubs in the area for the past thirty years?

A. There were no problems until Opa started trading.

Q. How do you know that the people in the CCTV clips came from Opa?

A. It had only been possible to play short clips. The full CCTV footage showed the people coming from and re-entering Opa.

Q. Was the situation better or worse since the reduction in the hours that Opa was allowed to use the terrace?

A. Worse. Customers queueing and coming out to smoke caused a great deal of disturbance.

Q. Why had the Applicant for Review objected to Opa's application to use part of Parade Gardens to accommodate customers who wished to smoke?

A. We did not believe this proposal would lead to a reduction in noise nuisance.

Q. The main problem seemed to be when people were leaving between 02.00 and 02.30. Did the door staff not try to control people entering and leaving the premises?

A. They evidently found it difficult to manage the number of people involved, which could be a hundred. If they could not manage this number, then Opa's hours should be reduced.

Louise Henderson stated her case. She said that she was also representing the other five tenants of 11 North Parade, which they rented from St John's Hospital. Most of the residents were quite elderly. She said that the noise did not just last for thirty minutes as Mr Hoare had suggested. There were often taxis tooting, not to mention people vomiting and urinating in the street. This did not happen every night, but sometimes noise and disturbance could go on until 04.00.

Ian Perkins stated the case for The Abbey Residents Association (TARA). He said that TARA received more complaints about Opa than any other licensed premises. Opa had opened as a restaurant, but was now operating as a late-night drinking and dancing venue. He had personally observed the “mayhem” that took place outside the premises late at night. He believed that this was not acceptable in a residential neighbourhood.

Diarmid Henry stated the case for Environmental Protection. He played recordings made inside residential premises not far from Opa. He submitted that the bass beat from the music was intrusive. The bass could still be heard when the window giving on to the street was closed. On one recording a door supervisor at Opa could be heard telling customers to be quiet. He said that he considered the volume of the music in the recordings as “severe”. He also believed that noise from people in the street was having a significant impact on local residents, but unfortunately Environmental Protection did not have powers to deal with it. In response to a question from a Member, he clarified that the recordings had been made in a living room inside Georgian House. In response to a question from Mr Miaris, he agreed that Mr Miaris had always been co-operative when problems were drawn to his attention.

Mr Miaris stated the case for the licence holder. He reminded the Sub-Committee that the previous review of the premises licence had focussed on noise from the terraces and that the permitted hours for use of the terraces had been reduced. Now the principal focus of complaints was noise from the street. He submitted that the fundamental problem was the smoking ban. Smokers had previously been able to use the terraces, but now people wishing to smoke after 23.00 had to exit. The only way in and out of the premises was down a set of narrow steps from North Parade. There was congestion on the steps because of the number of people wanting to enter and leave at the same time, which resulted in queues of people waiting for admission. He was surprised when Georgian House (Bath) Management Company had objected to his application to lease part of Parade Gardens to be used by Opa customers who wished to smoke, as he was sure this would have reduced problems in the street. He had placed signs all over the premises asking customers to be mindful of local residents and to leave quietly. Customers who were leaving were given lollipops to help calm them down. He had asked the taxi company to ask their drivers to switch off their engines when waiting. He had constantly liaised with the Police and Council officers and was always trying to improve the situation. He had invited local residents to contact him whenever there were problems. He had had two or three discussions with the occupier of a nearby basement flat, who had told him that there were no problems. He believed that he was making every effort to minimize the impact of his business on local residents. He had asked the Police for a log of crimes associated with the premises and they had told him that there had only been one incident in four years. Parties at the hearing today had said that the area was unsuitable for an establishment like Opa, but they were overlooking the fact that there were other late-night licensed premises nearby, bringing at least 1500 people into the area. People sometimes did misbehave when waiting at the bus stop or waiting for a taxi and there were people walking up and down Duke Street all night. He constantly told his staff that if anything happened to the premises licence their jobs would go first. He had suggested to Mr Brett that they work together to improve the situation, but had not got a positive response. He believed the way forward was for the Council to grant his application to use part of Parade Gardens for smokers

between 00:00 and 02:00. In his view, this was the only way to get people off the pavement.

In response to questions from Members, Mr Miaris stated:

- Opa did not charge admission fees; outside event organisers using the premises did charge admission fees, but Opa did not receive any of this money
- Other premises nearby had the same hours and played music
- Nightclubs have a dance floor and charge admission fees; planning enforcement had visited Opa and had concluded that it was not operating as a nightclub

A Member referred to an occasion when he had visited Opa and was charged an admission fee. He had also seen a dance floor on the premises. Mr Miaris replied that the admission fee must have been charged when an external organisation had arranged an event, perhaps on behalf of a charity. The Member responded that he had not been told that the £3 fee was being collected for charity. He felt that Opa might be a victim of its own success. He thought there were two fundamental problems: the number of people wanting to enter the premises and the volume of the music being played late at night. He suggested that the queues were not caused by smokers but by the number of people attracted to Opa. Mr Miaris disagreed. He thought that most of the current queuing problems were caused by the narrow entrance and that there had been far fewer problems when smokers did not have to exit to the street late at night. In response to a question from Mr Brett as to whether he believed he was running a restaurant or a nightclub, Mr Miaris said that he believed that he was running a continental-style restaurant bar. He provided meals, not bar snacks. Mr Brett pointed out that Opa had opened in June 2007 and that the smoking ban had come into force on 2<sup>nd</sup> July 2007. Dr White referred to Mr Miaris' statement that he always tried to co-operate with his neighbours and asked him how he had responded to a letter she had sent him. Mr Miaris said that he had responded politely. Dr White disagreed and said that Mr Miaris had told her that it was nothing to do with him and had forwarded the letter to the Licensing Officers.

The parties summed up.

Mr Brett submitted that the issues were very simple. He believed that the evidence established that local residents were being affected by nuisance emanating from Opa between 23.00 and 02.30 for up to five nights a week. He believed that the only effective remedy would be to impose an earlier terminal hour on Opa.

Mr Miaris said that that he was making every effort to minimise the impact of his business on local residents and that he should be brought to another review if he ever ceased to do this. Mr Hoare said that it was hard for those who were not present in the area during the relevant hours to judge how severe the disturbance actually was. The area may have been quieter at one time, but it was not far from the city centre and the night-time economy that had developed in recent years. A reduction in trading hours would have a severe impact on Opa. He urged that if the Sub-Committee felt that it had to take action of some kind, it should consider issuing

a warning and allowing the licence holder a period of time, say three months, to continue his negotiations for the use of Parade Gardens as an area for smokers.

Following an adjournment, the Sub-Committee **RESOLVED** to remove authority to provide regulated entertainment from the premises licence.

## **REASONS**

Members have determined an application for a Review of a Premises Licence at Opa, North Parade, Bath. In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act 2003 is to be reluctant to regulate in the absence of real evidence. Further, they must only do what is necessary and proportionate to promote the licensing objectives based on the evidence presented to them.

Members listened carefully to the applicant, took account of the representations from the Interested Parties and also took account of the representations from the Responsible Authority and Premises Licence Holder. However, Members disregarded representations as to the planning use of the premises and the decision of the Local Planning Authority. Members were careful to balance the competing interests of all the parties.

This review is brought on the grounds of Public Nuisance. However, Member's noted the applicant did not criticise the way Opa was run, but rather questioned the kind of establishment it was in that particular location. Member's also noted that the Abbey Residents Association had no objection to Opa operating as a restaurant similar to others in the City but rather objected to it operating as a nightclub. So far as Responsible Authorities were concerned the Environmental Health Officer, having served a Noise Abatement Notice dealing with noise from amplified music and voice and noise caused by persons or groups of persons on the premises, stated there was no evidence of statutory nuisance but rather evidence of significant disturbance.

The applicant, interested parties and Responsible Authorities presented evidence of Opa's customers causing public nuisance. The evidence took the form of a noise report from an acoustic consultant relating to a planning application, video surveillance from the Georgian House Management Company and sound recordings made in the course of the Environmental Health Officer's investigations. In particular the evidence related to disturbance caused by customers of Opa when queuing to enter the premises, late night disturbance when customers left the premises and when smoking outside and incidences of urination, defecation and littering affecting nearby residential premises. There were also recordings of noise disturbance caused to residents in noise sensitive premises arising from amplified music played on the premises.

The applicant stated that the premises operated in such a way so as to balance the wishes of both customers and residents and that his premises were not known for fighting or underage drinking. Moreover, doormen were employed to control queuing, those smoking and those leaving the premises and to supervise the rear terrace

when closed. He further stated that his client worked closely with the police, members of the public and the Council and had addressed all matters raised following multi-agency visits. Both the applicant and his representative Mr Hoare reiterated that although the premises had some of the characteristics of a nightclub it was unique to Bath in that it was a restaurant which had music and dancing similar to premises found in Spain and Greece. Opa was not a nightclub.

Members have found merit in the review application and acknowledge that one of the key aims of the Licensing Act 2003 is to protect local residents whose lives can be disturbed by people visiting licensed premises. However, Members remind themselves that there should be no duplication of other legal requirements because where existing laws place statutory responsibilities on premises it is unnecessary and disproportionate to impose the same or similar duties. Moreover, the Act should not be used as punishment but rather to promote the licensing objectives in order to develop a thriving and safe night-time economy.

Members found that these premises form part of the City's night time economy and provides regulated entertainment attracting large numbers of customers who caused public nuisance. However, Members find that the premises are situated on a busy thoroughfare with passing vehicular and pedestrian traffic adjacent to many other late night bars, clubs and restaurants, accordingly, there was a great deal of ambient noise in the immediate vicinity that could not be directly attributable to Opa. Nevertheless the evidence was compelling that customers attracted to the late night entertainment provided by Opa caused public nuisance. Members, however, did not consider cutting back the hours as suggested by the applicant as they believed that this would not address the issues raised and would be disproportionate. Moreover, Members believed that the imposition of additional conditions would not reduce public nuisance arising from the queuing because on the evidence it had been shown that the doormen were doing all they could to control customers but still they continued to cause a nuisance. In all the circumstances, and given that the Premises Licence holder reminded Members that the premises was a bar and restaurant not a nightclub, Members considered it necessary and proportionate to remove the licensable activity of regulated entertainment which they found to be the licensable activity being carried on at the premises which caused public nuisance. Members considered that because the premises were a bar and restaurant the removal of this activity would not restrict the premises ability to continue to trade in the way asserted by the Premises Licence holder.

The meeting ended at 2.03 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**