

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 16th January, 2014, 10.00 am

Councillors: Manda Rigby (Chair), Anthony Clarke and Roger Symonds

Officers in attendance: Enfys Hughes, Alan Bartlett (Principal Public Protection Officer), Terrill Wolyn (Senior Licensing Officer) and Shaine Lewis (Principal Solicitor)

90 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

91 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Councillor Gabriel Batt sent his apologies, Councillor Anthony Clarke was his substitute.

92 DECLARATIONS OF INTEREST

There were none.

93 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

94 MINUTES 17TH DECEMBER 2013

RESOLVED that the minutes of the meeting held on Tuesday 17th December 2013 be confirmed as a correct record and be signed by the chair(person).

95 LICENSING PROCEDURE - VARIATION

RESOLVED that the procedure for the meeting be noted.

96 APPLICATION TO VARY THE PREMISES LICENCE FOR ZERO ZERO NIGHTCLUB, YORK BUILDINGS, GEORGE STREET, BATH

The Sub-Committee considered the report which sought determination of a variation of an existing Premises Licence under Section 34 of the Licensing Act 2003, in respect of Zero Zero Nightclub.

Present:

Premises Licence Holder (PLH)	- Kambiz Shayegan
Designated Premises Supervisor (DPS)	- Joseph Baio
Licensing Agent	- David Holley

Representations:

Police Inspector	- Steven Mildren
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Police Licensing Officer	- Martin Purchase
Fire Safety Officer	- Nigel Jagger
Residents' Association (CARA)	- Ian Perkins (on behalf of TARA and CARA)

It was confirmed that the procedure had been read and understood.

The Senior Public Protection Officer presented the report and clarified that there was no change to the timings of the licence. The variation sought the removal of five conditions and outlined five replacement conditions (see paragraph 5.3 of the report). She confirmed that representations had been received from the police, fire and two residents' associations. She also noted that the premises were located in the Bath Cumulative Impact Area.

Applicant's case

The applicant's agent presented the case along with the Premises Licence Holder and the Designated Premises Supervisor. During the presentation the following points were made:-

- the PLH had been in the licensing trade for 30 years and had a special relationship with his manager and staff;
- he had trusted one person, the previous manager, who had let him down badly which had resulted in the problems at the club last year;
- as the police had wanted, he had closed the club, got in new staff and a new manager (DPS) and he had spent a lot of money on improvements and changes;
- the new manager knew the Bath club scene very well;
- the PLH had the required number of door supervisors at 10pm but no-one arrived at the club until at least 11pm, the club appeared 'unsafe' with that number of door supervisors present;
- the problems last year arose in the toilets, now the PLH employed a toilet supervisor who did checks and sold perfumes, he did not believe checks also needed to be made by the door supervisors (as per the condition);
- the PLH found it difficult to always have a female door supervisor present, as there were not many women in this job;
- no other club in Bath had the restrictions that Zero Zero did;
- since the problems last year the club had proved itself, except for one incident;
- it was hard running a club in this economic climate and having to pay out so much of the takings on door supervisors;
- a guest list had been created, so the majority of people at the club were known and from the numbers on the guest list it was possible to know which nights would be busy;
- 60% of customers had been there before;
- the PLH wanted the club to run efficiently with the necessary number of staff;
- already over 300 had been banned from the premises as they were not the 'right' clientele;
- the DPS often stood on the door to monitor the situation;
- the DPS had been trained in relation to general management, fire regulations, alcohol and drugs and trained the staff present appropriately;

- the door supervisors have helped out with 'nasty' situations outside the club;
- the DPS did not feel that there was a need for a female door supervisor to do searches as if necessary they could be done by female members of staff;
- the DPS confirmed that the work in relation to the fire regulations had been completed;
- the club was enjoyed by people of all ages, it had been disappointing to have a 'blip' last year but now there was a new manager and style of management to and all the issues had been sorted out;
- the agent and management of the club had met with the residents' association to discuss the issues.

The Legal Adviser stated that as the Council had a Cumulative Impact Policy and as the premises was within the cumulative impact area, a rebuttal presumption is raised that such applications should be refused unless the applicant demonstrates that the variation if granted will not undermine the licensing objectives and add to the cumulative impact being experienced. He therefore suggested that the applicant addressed the Members on this as they had not done so in their operating schedule or oral representations.

Questions were asked of the applicant from the Councillors, Police and Fire Officers and the Councillors wished to know how the applicant proposed to satisfy them that the removal of the conditions would not undermine the licensing objectives. The following responses were given:-

- in respect of the replacement condition relating to training which appeared to be less specific, it was stated that there was a high turnover of staff at the club and the majority were trained by professionals. However sometimes there was not enough time to get the professionals in, so it was suggested that the manager could train them in the first instance and professional training could follow later on;
- in respect of the replacement condition relating to capacity which removed the limit of 300, it was noted that the fire regulations came in just after the Licensing Act and in the guidance notes it was stated that figures should not be included. The applicant had had an independent assessment undertaken. The Fire Officer stated that the capacity figure was not purely for fire safety but health and safety as well and looked at floor space, queue times and pinch points;
- the Senior Public Protection Officer clarified that the capacity figure was part of the original variation in 2006 and had been offered to promote all of the licensing objectives by the applicant;
- in respect of the club's opening hours, the applicant stated there was a 24 hour licence in place but generally the club was open Thursday, Friday and Saturday nights and sometimes on a Monday if there was a booking. the club could open in for mornings for a business meeting;
- the DPS confirmed he was confident to train all the staff in all matters. However in response to him stating to police officers that he did not know all the conditions, he stated that when 5/6 officers had attended the club he had felt intimidated and had made a mistake;
- with regard to a request from the police to turn the music down as it was too loud, the DPS recalled this incident and had turned the music down, noting

- that if a film was being watched in the advert break the volume could be too loud. It was noted that the same thing had happened the following week;
- in respect of the guest list, the DPS stated there were 2 queues, one being an advanced queue for those on the guest list;
 - the guest list was a promotional tool used on Facebook and gave an idea of how many people to expect at the club;
 - with regard to the suggestion to reduce the number of door supervisors, the PLH stated that for 6 months 8 door supervisors had been employed and often did nothing until customers started arriving about 11.30pm, he wanted discretion and could not afford staff if there was no need for them. As the club had proved itself he wanted to be treated like the other clubs in Bath. Now the club turned lots away whereas the previous manager had let them in.

Ian Perkins' case (TARA and CARA)

Ian Perkins put his case and made the following points:-

- the incident referred to last year was not just 'regrettable' it was appalling, the film showed people falling over they were so drunk, vomiting, defecating and there was evidence of vandalism;
- there has been a systemic failure to control drugs at the premises;
- the resulting conditions had been imposed as they were necessary to rectify the situation as there needed to be a systemic change in the operation;
- we do not oppose some modifications as things have settled somewhat;
- however it was felt that the applicant now wanted to demolish the framework;
- we do meet regularly with the applicant but saw no evidence of systemic change;
- the answer given to our questions is always 'the manager', could he encompass all that was required? What would happen if he moved elsewhere? The residents wanted something more concrete.

In respect of questions put to Ian Perkins he responded as follows:-

- they would always be prepared to meet the licensee to discuss issues;
- Zero Zero was in a special situation as it has a new manager but was not under new management;
- a longer time period was needed to ensure the changes at the club were sustainable;
- there have been improvements but they were due to the conditions imposed on the licence.

Avon and Somerset Police Constabulary case

Martin Purchase and Steve Mildren put the case as follows:-

- there had been some negotiation in respect of searches which had been amended to random searches, however if there was no female door supervisor this could only apply to men. As a minimum there should be random bag searches for female customers and having a female door supervisor was a backup for the male door supervisors;

- in respect of reducing the number of door supervisors, the number of door staff set the scene at the club;
- what would happen if the numbers exceeded what was expected and the management only had a few staff?
- there was a huge responsibility on those staff serving alcohol at the club therefore accredited training was vital;
- the comment in respect of the DPS not being aware of all the conditions had been noted along with the reference to him turning the music volume down, but it was expected that all members of staff should be aware of the conditions, therefore it should have been noted that the music was louder and it should have been turned down immediately;
- if the DPS was not aware of all the conditions how could he pass this information onto staff when he trained them;
- a lack of appropriate training resulted in poor management;
- with respect to capacity, the incidents related to drugs and violence and disorder and the doorstaff had not been able to stop this happening;
- the number of door staff should relate to the capacity;
- from evidence drug taking commonly took place in the toilets of premises, having a member of the door staff doing checks gave reassurance to customers that they would not be approached in the toilets.

In response to questions put to the police they responded as follows:-

- the premises needed to improve over a longer period, the evidence in the logs was of some improvement, 2012 there were 47 telephone calls and 2013 there were 34 telephone calls;
- yes there was evidence that the club had made improvements but given what had happened there this should happen;
- the PLH was working hard to improve the reputation of the club;
- George Street was the busiest street at night in the city and all premises had a responsibility, Zero Zero needed some help and assistance to provide services as expected;
- the improvements were as a result of the conditions imposed on the licence;
- a larger number of door staff was a deterrent and assisted the manager of the premises, only 2 door staff it would not be sufficient for the capacity at the club;
- appropriate accredited training was necessary at the club because of the way the club had been run in the past, previously the training had not been appropriate;
- the club should recognise it was in a position of development and there were still some issues that required improvement to demonstrate that the premises was being run properly.

Avon Fire and Rescue Service case

Nigel Jagger, Fire Safety Officer put the case as follows:-

- capacity was not purely about fire safety, the assessment includes the floor space, number of exits and toilets and is linked to the licensing objectives;
- the capacity figure was based on sound judgement and the risk assessment and should remain;

- previously the figure was 312 then there was a wish to increase it to 350 which might be accepted following discussion and with evidence;
- reference to Section 182 which made provision for the Committee to add conditions and put a capacity figure on the licence.

Question:-

- the agent made mention in the guidance notes to estimating fire safety according to a formula, the Fire Officer stated the premises was risk assessed in terms of fire safety, health and safety issues, crime and disorder and public safety.

Summing up.

The agent summed up as follows, he stated the premises provided good entertainment for the city centre. Good progress had been made in the last 12 months but the cost was very important to the applicant. The new manager ensured records were now kept, he knew the staff and many of the customers, including any drug users. With regard to training the best system was for the manager to train staff immediately they started, rather than wait for the accredited training.

Ian Perkins summed up as follows, over a period of years there had been problems at the premises and the problems last year happened due to a loss of internal control. The conditions were only imposed 12 months ago and to ask residents to rely on internal control again was dangerous. George Street was a very sensitive area.

Martin Purchase summed up on behalf of the police. He stated there was a need for a female door supervisor and it was important to have a higher number of door staff early in the evening, with the number of door staff being based on the capacity limit. There was evidence that regular recorded toilet checks reduced problems. Capacity limits went further than fire regulations and played a part in public safety.

Nigel Jagger summed up for the Fire service and stated that the issue of capacity was the 'holy grail'. He would not want the condition removed but was happy if it was reviewed.

The issue of training was further discussed and it was agreed that the condition would not be removed but amended to reflect that the manager would do initial training on commencement of employment, to be followed by accredited training within 2 months.

RESOLVED that the variation to the premises licence at Zero Zero Nightclub, removal of the conditions in paragraph 5.3 of the report, be refused, except for the amendment to the condition in relation to training, see below.

Reasons for the decision

Members have today determined an application to vary the premises licence at Zero Zero, 1 York 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 are aware that the proper approach under the Licensing Act is 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 is raised that such applications should be refused unless the applicant demonstrates that the variation if granted will not undermine the licensing objective and add to the Cumulative Impact being experienced.

Members were careful to take account of all the relevant oral and written representations from the applicant, Responsible Authority and Interested Parties and were careful to balance their competing interests.

APPLICANT

The applicant stated the night club had been running for some considerable time and for some 12 months with conditions imposed as a result of previous difficulties at the premises. It was said that the problems had arisen from a trusted person who had made mistakes leaving the Licensee badly let down. Regarding female door supervisors it was said that there are not many in the industry and it could not be guaranteed that a female will always be available. It was also said that a premises with a high number of door supervisors would put off customers and no other club in the vicinity had such restrictions. The applicant stated that there had been significant progress in the last year and he now employed toilet attendants so there was no need for the additional toilet checks. Regarding training it was said that this is given by the current manager as staff came and went on a regular basis. It was however accepted that accredited training would be given within 2 months of a person starting employment following this initial training by the manager. With regard to capacity it was felt that this could be increased as all the Fire Officer's concerns had been addressed. In summary the applicant felt this is a new club deserving of a new start and opportunity to survive in tough economic times. It was stated that the club offered good quality and was improving such that the conditions could therefore be varied.

RESIDENTS GROUPS

The Chair of a local resident group stated that the premises were a constant source of complaint before the last hearing and the evidence presented was appalling. The hearing had resulted in a number of conditions being attached designed to deal with the situation and that the applicant was seeking to demolish these. It was further said that the residents would like to see real evidence of a systemic approach to change but that they had not heard any evidence of that change other than the appointment of this particular manager.

POLICE

Whilst the Police accepted incidences involving the premises had reduced in recent times they suggested this was a result of the package of conditions and that this would have been expected to happen in any event. With regard to door supervisors the Police suggest that removing the requirement for a female supervisor would limit the effectiveness of random searches, impact on the behaviour of male customers and, moreover, any overall reduction in door supervision would not benefit the good management of the premises or safety of the public. This was particularly important in terms of early intervention in relation to drunken persons, tension and the assistance of safe evacuation from the building.

FIRE SAFETY

The Fire Safety Officer stated that the matters raised in the risk assessment had been addressed. However, concern was raised that a basement night club had limited emergency exits therefore adequate measures to ensure the safety of the public using the premises were essential. In the circumstances one of these measures was an appropriate capacity limit going to all the licensing objectives and not simply fire safety and in his professional opinion there should be no change in capacity at the premises.

MEMBERS

Members were pleased to note the improvement in the operation of the premises. However, they considered that whilst the manager had changed the management of the company under which the problems had previously arisen had not. Members were not been satisfied that the applicant had demonstrated, over a long enough period of time, that the premises could operate in a safe and responsible manner or that the relaxation of the conditions relating to door supervisors would not have a detrimental effect on the licensing objectives. This is particularly so given the applicant had not presented any evidence in his operation schedule or in oral evidence this morning as to why such a variation would not lead to a detrimental impact in the Cumulative Impact area as he was required to do. Accordingly they resolved not to relax this condition as they believed to do so will have a detrimental effect on licencing objectives and they did not consider the proposed or any other condition would adequately address their concerns or those of the Responsible authorities or Interested Parties.

With regard to capacity, and whilst noting a number of concerns raised by the Fire Officer had been addressed, Members followed the professional advice of the Fire Safety Officer and therefore refuse this variation on public safety grounds and the prevention of crime and disorder.

So far as the variation of the toilet check condition was concerned Members heard there was a toilet attendant employed on certain occasions. However, Members did not feel this negated the need for inspections by a fully trained door supervisor every 15 minutes who's' visible presence alone would act as a deterrent.

In all the circumstances Members considered the conditions imposed some 12 months ago had demonstrably improved the situation but that their removal or amendment would not ensure the premises continued improvement. Moreover, as the burden was clearly on the applicant to demonstrate that any variation would not have a detrimental impact on the licensing objective, they had not been satisfied that the applicant had had discharged his burden and resolved not to vary the above conditions.

Nevertheless, Members considered it appropriate, however, to vary the training condition which had timed-out as follows - all staff shall be given initial training on commencement of employment in alcohol retailing and illegal drugs use and attend and complete accredited training in responsible alcohol retailing and illegal drug use within 2 months. A record of all training shall be made and produced to the police and licensing authority on reasonable request.

Delegated authority to the Licensing Officer to issue the licence.

The meeting ended at 1.55 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services