

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING (GAMBLING & LICENSING) SUB-COMMITTEE

MINUTES OF THE MEETING OF 24 JUNE 2010

Present: - Councillors: Gabriel Batt, Carol Paradise, Tim Warren (Chair)

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

10 EMERGENCY EVACUATION PROCEDURE

The Clerk read out the procedure.

11 ELECTION OF VICE-CHAIR (IF DESIRED)

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

12 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

13 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

14 LICENSING PROCEDURE

At the request of the parties the Chair explained the procedure to be followed for the next item of business.

15 APPLICATION TO VARY A PREMISES LICENCE FOR THE LOUNGE, GROUND FLOOR AND BASEMENT, 43 ST JAMES'S PARADE, BATH BA1 1UQ

Applicant: RMH Property Ltd, represented by David Holley (Licensing Agent) and Salvatore Ciambrone (Director and Designated Premises Supervisor)

Interested Party: Mark Quigley

Responsible Authority: Jeremy Lockley (Environmental Health Officer)

The parties confirmed that they understood the licensing procedure.

The Licensing Officer outlined the application. She said that the licence currently authorised the following activities:

Sale of alcohol on and off the premises

Monday to Thursday	11:00 to 00:30
Friday and Saturday	11:00 to 01:30
Sunday	11:00 to 22:30

Late-night refreshment

Monday to Saturday 23:00 to 00:00

Opening Hours

Monday to Thursday 08.00 to 01.00

Friday and Saturday 08.00 to 02.00

Sunday 08.00 to 23.00

The variation sought to extend the terminal hour for the sale of alcohol to 01:30 every day, the terminal hour for late-night refreshment to 01.00 every day and the opening times to 02.00 every day...

She said that representations had been received from Environmental Health in relation to the licensing objective of the prevention of public nuisance and from Interested Parties in relation to the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder.

Mr Holley stated the case for the applicant. He introduced Mr Ciambrone, who was both a Director of the company that owned the Lounge and the Designated Premises Supervisor, and had run the premises for the past seven years. Mr Holley said that the premises had become noted for cocktails and added colour and variety to the night time economy of Bath. However, he stated that the premises was not a nightclub and the management had no intention that it should become one; the provision of food was one of the most important aspects of the business. He stated that since the weekend hours of the premises had been extended eighteen months ago, there had been no complaints. The management had recently invested in a new kitchen and a new ground-floor bar. Mr Ciambrone stated that in the past seven years the Police had not once been called to the premises and there had only been three complaints about noise. Mr Holley drew attention to the condition in the licence giving the Police the power to require door staff to be employed at the premises by written request. This, he said, could be used if there were complaints, for example, of noise from smokers outside the premises. He noted that the Police had not made a representation to the application. He referred to the comments about noise from music in the representations and said that all music in the premises was background music only and was controlled from the bar on the ground floor. If the management wished to provide live music, they would apply for a Temporary Event Notice. In conclusion, he submitted that the premises were well-run and that there had been no complaints before those made in the representations.

The Chair noted the repeated comments in the representations that the music in the premises was more than background music. Mr Ciambrone said that he had nothing to say in response to these comments; he had run the premises for seven years and there had been no complaints until today. He added that he had removed a speaker from the ceiling in order to reduce the escape of noise. In response to further questions from Members Mr Ciambrone stated that:

- there were residents living immediately above the bar; the landlord of the building had said that he was willing to put sound insulation between the floor above and the ceiling of the bar

- he had no knowledge of a fight which had started inside the premises and had resulted in a prosecution – this may have happened before he had taken over the premises

In response to a question from the Environmental Health Officer, Mr Ciambone said that he would be willing to install a noise limiter for music in the premises.

Mark Quigley, an Interested Party, stated his case. He said that he was also representing the other resident who had made a representation. He said that he believed there would have been more representations if the application had been better publicised. He said that he was frequently disturbed by noise from within and outside the premises. He stated that there were sometimes fights outside the premises, that he thought the management exercised little control over customers; there was no sound proofing in the building, and that the bass from music played in the premises was often intrusive. He believed that noise had increased over the past six months and he sometimes went away at the weekends to escape disturbance. He stated that when the Licensing Officer had visited the premises she had said that the atmosphere outside the premises was threatening and the noise inside deafening. The Licensing Officer confirmed that she had said this, and stated that the time of her visit had been 23:30 on a Friday evening. In response to a question from the Chair Mr Quigley stated that the management had been indifferent when he had complained direct to them, so for several months he had been contacting Environmental Health when there had been noise problems. In response to questions from Mr Holley he said that:

- a noise limiter might help – any reduction in noise would help, but there was also a great deal of noise in the street outside the premises
- he did not think that the landlord would be willing to soundproof the building
- he had lived in the premises for 8 years and the applicant was aware that he had made many complaints about noise

The Environmental Health Officer (EHO) stated his case. He said that there had been three complaints about noise from the premises since March 2010, there was an ongoing investigation and the premises may be being monitored with recording equipment. He believed that any extension of hours could only lead to an increase in noise nuisance and to increased cumulative impact in the area. Mr Holley asked the EHO what he thought the best kind of noise limiter would be. He replied that it would be one where the maximum volume could be adjusted and the power was cut off if the maximum volume level was exceeded. The Senior Legal Adviser pointed out that a volume limiter should not be required for background music only, which was all that was provided in the premises.

The parties were invited to sum up.

Mr Quigley said that the noise from the premises was excessive and would become worse with an extension of hours for the premises. He stated that this would have a severe impact on himself and other residents.

Mr Holley acknowledged that effective points had been made in the representations. He said that the applicant would liaise with the EHO to ensure that music in the premises was played at a satisfactory volume. He stated that there had been an escape of noise when private party was held at the premises; the organisers had brought their own music equipment and that this would not happen again without a

Temporary Event Notice. He further re-iterated that the management had no intention of turning the premises into a nightclub.

The EHO said that he opposed any extension in the hours for the premises because, in his view, this would add to the cumulative impact in the area.

Following an adjournment, the Sub-Committee **RESOLVED** to refuse the application.

REASONS

Members have today determined an application for the variation of a premises licence for The Lounge, Ground Floor and Basement, 43 St James's Parade, Bath. In doing so they have reminded themselves of the provisions of the Licensing Act, Human Rights Act, case law, Statutory Guidance and the Council's Statement of Licensing Policy which includes a Cumulative Impact Policy.

Members note that the proper approach under the Licensing Act is to determine an application on its own merits and be reluctant to regulate unless there is evidence that premises will have a negative impact on the licensing objectives. Members listened to and balanced the competing interests of the applicant, the Responsible Authority and the Interested Parties when reaching a decision.

The application attracted representations on the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. Members were careful to disregard representations falling outside the Licensing Act 2003.

Members have considered the representations and taken account of the evidence put before them, which included the nature of the premises, and the way in which it had been and was proposed to operate.

Members noted that the premises fell within the cumulative impact area according to the Council's cumulative impact policy contained in its Statement of Licensing Policy. This creates a rebuttable presumption that any applications for new premises licences, or variations, in the area of cumulative impact, will be refused where relevant representations are received, unless the applicant can show that the operation of the premises will not add to the cumulative impact already being experienced.

Members noted that the applicant had not demonstrated that the variation, if granted, would not add to the cumulative impact already being experienced in the area. They concluded that, if it was granted in accordance with the application, it would add to the cumulative impact in the area and would not promote the licensing objectives. They also considered that, if additional conditions were imposed to those already existing, it would not control the nuisance that had already arisen.

Members therefore refused the application accordingly.

The meeting finished at 2.35 pm.

Chairman.....

Date signed and confirmed.....