



Licensing Act Sub-Committee - Record of Hearing held on Monday 27 April 2009.

MEMBERS: Councillor THOMPSON (Chairman); Councillors GOODWIN and GOODYEAR.

1 Declarations of Interest.

None were received.

2 Application for Variation of Premises Licence for Indigo, 133-135 Seaside Road.

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The legal adviser to the Sub-Committee reported that an application had been made for an adjournment of the proceedings from the freeholder of the premises until a dispute concerning the lease and the legal entitlement of Exquisite Leisure Ltd to occupy the building had been determined. The Sub-Committee was advised that the applicant was not required to have a legal interest in the premises to submit an application and that the legal proceedings did not preclude the determination of the variation application. The Sub-Committee agreed that the hearing should proceed.

The Licensing Manager outlined the report detailing the application from Mr Leo Valls for a variation of a premises licence in respect of Indigo, 133-135 Seaside Road. The Sub-Committee was advised that the premises were located within the area identified as being subject to the Cumulative Impact Policy which was adopted by the Council on 25 July 2007.

The Licensing Manager had written to all interested parties and responsible authorities following a letter Mr Valls had sent to all individual parties who had made representations. This was done in response to concerns from some interest parties who had felt intimidated and threatened by the content of his letter.

The Licensing Manager reported that in respect of the previous application submitted by the applicant, the newspaper advertisement had not been lodged within the prescribed timescales rendering the application invalid. The application had subsequently been re-advertised and all parties advised that they would be required to resubmit their representations.

In response to the applicant's contention that the hearing had not been convened within the required timescale, the Legal Adviser to the Sub-Committee advised that the hearing had been convened within 20 working days beginning with the day after the end of the period during which representations may be made, which was 2 April 2009. Taking into account Bank Holidays during this period, the last date on which the hearing could be convened, in accordance with the hearings regulations, was 1 May 2009.

Sergeant J Williams, Sussex Police had made written representations as a responsible authority under the prevention of crime and disorder and public nuisance licensing objectives. Mr D Richards, barrister for Sussex Police addressed the Sub-Committee and gave an overview of the Cumulative Impact Policy. He made reference to paragraphs 1.2, 1.4 and 3.2 of the policy and stated the importance of paragraph 4.2 which required an applicant to provide evidence to rebut the presumption against refusal of an application within the cumulative impact zone.

He referred to the police statistics which provided indisputable links between crime and disorder, the night time economy and alcohol consumption and that public place violent crime, criminal damage and anti-social behaviour offences all occurred at a totally disproportionate rate in this small zone compared to the rest of the town.

Indigo was located at the heart of the zone and the police were concerned that a variation to the existing hours to permit the sale of alcohol and other licensable activities from 00.00 hours to 24.00 hours, 7 days a week would provide a further source of crime and disorder within an area heavily populated with licensed premises and problem levels of crime, disorder and public nuisance.

The police considered that the applicant had failed to submit any measures to ensure that the proposed variation would not add to the cumulative impact being experienced in the area. The conditions set out in the operating schedule only related to the current operating hours of 02.30am. Reference was made to the use of the rear decking and that no measures had been put forward to address the impact on local residents of its use until the extended hours sought.

With reference to the comment in respect of the rear decking, Mr Valls stated that no facilities were used or available at the rear of the premises. A smoking area was allocated at the front of the premises.

Mr Richards stated that the application, in terms of its dealing with the concerns of local residents and the representations submitted, was of serious concern. He referred to the individual letters sent to interested parties and that their content could be considered as threatening in tone. The Licensing Manager had been required to write to all interested parties to reassure them that they were entitled to make representations.

Sergeant Williams advised the Sub-Committee that since the adoption of the Cumulative Impact Policy and the implementation of other control measures, incidents crime and disorder had been reduced, particularly violent crime. The crime statistics had recently been reviewed and had shown a reduction in the number of incidents reported. No other premises operated for 24 hours and the Sub-Committee was advised that the current police operation to manage hot spot areas during Fridays and Saturdays would need to be extended if the application was granted. Sergeant Williams considered that Mr Valls letter in stating that interested parties may have acted criminally in making representations was threatening.

In response to a question from Mr Valls, Sergeant Williams confirmed that the incidents of PPVC could not be linked to individual premises.

Regular complaints were received regarding noise and disturbance in Seaside Road as customers moved between premises in the area. It was acknowledged

that there was no evidence to suggest problems in Seaside Road were caused by customers of Indigo and the police had received no complaints in connection with the management of the premises. It was stated however that the applicant had failed to acknowledge that an increase in noise and disturbance may occur as a result of the extended hours and to submit any measures to address the concerns raised by the police.

Mr A Albon, Environmental Health had made written representations as a responsible authority under the prevention of public nuisance objective. Conditions were proposed to ensure that amplified music or speech at the premises should be at a background level and that it should not be audible beyond the perimeter of the premises. It was stated that live bands were not suitable at the premises due to the poor sound insulation between the premises and the residential accommodation directly above. In response to a question from Mr Valls, Mr Albon confirmed that Environmental Health had no current concerns in respect of the operation of the premises.

Mr A Battams, Planning Department had made written representations as a responsible authority under the prevention of public nuisance objective. The hours proposed in the application differed significantly from the hours permitted under planning permission EB/2008/0381 which restricted use to 1.30am Monday to Thursday, 2.00am on Friday and Saturday and 1.00am on Sunday. The hours were imposed in the interests of the amenities of nearby residents. The Sub-Committee was advised that an appeal had been lodged by the applicant to remove the restrictions on the hours of operation but that a decision from the Planning Inspectorate was not expected for at least 3 months. The Council's Planning Enforcement Team was also investigating the current use of the premises and whether lap dancing was a breach of the approved Class A3 use (drinking establishments). The Legal Adviser advised the Sub-Committee that the enforcement action in respect of the use of the premises was not relevant to their consideration of the variation application.

Written representations had been received from Councillor S Wallis, Ward Councillor as an interested party under the prevention of public nuisance and crime and disorder licensing objectives. He advised the Sub-Committee that any extension to the opening hours would exacerbate the existing problems for residents. He had attended meetings with residents who had made regular complaints in respect of noise, disturbance and anti-social behaviour from customers leaving premises in the early hours of the morning. A saturation point of premises opening until the early hours of the morning had now been reached and a premises being permitted to open 24 hours was opposed. Reference was made to the new housing development between Susans Road and Cavendish Place which would increase the number of residents living in the area.

Written representations had been received from Councillor Mrs B Healy as an interested party under the prevention of public nuisance licensing objective. She stated that she had taken exception to the contents of Mr Valls letter. She supported the position of the police and that since the adoption of the Cumulative Impact Policy improvements had been made in the area. An extension of the opening hours for Indigo would lead to an unacceptable level of disturbance for the residents of the Colonnades which adjoined the premises and other residents of nearby properties.

Written representations had been received from Mr A Ley, Pevensey Road Neighbourhood Association as an interested party under the prevention of public nuisance licensing objective. He advised the Sub-Committee that Members of the Association suffered considerable noise and disturbance from customers of late night entertainment venues.

Residents who lived on the routes to and from Seaside Road also suffered from disturbance in the early hours of the morning. Owners of local guest houses had reported guests leaving before the end of their stay because of the noise, which had resulted in lost business and financial hardship.

Reference was made to a poster which was displayed at children's eye level and was considered to be inappropriate in nature. A complaint had been made to the management regarding the poster and they had failed to act. A complaint had also been made to the Licensing Team. The poster had been censored by the management following an article which had appeared in the local paper who had been contacted by Mr Ley. The applicant had demonstrated his contempt for the views and concerns of local residents by his actions in respect of the poster and by the content of his letter to residents who had submitted objections to the application.

Following questioning of interested parties and responsible authorities by Mr Valls the Sub-Committee sought advice from the legal adviser that in view of the late hour, whether it was permissible to adjourn the proceedings.

The Sub-Committee withdrew to consider the matter. When the Sub-Committee reconvened the Chairman advised the parties present that the Sub-Committee was minded to adjourn the hearing to a future date.

RESOLVED: That consideration of the variation application in respect of Indigo be adjourned to a future date.

The meeting closed at 9.55 p.m.

**M Thompson
Chairman**

Licensing Act Sub-Committee - Record of Reconvened Hearing held on Tuesday 26 May 2009.

MEMBERS: Councillor THOMPSON (Chairman); Councillors GOODWIN and GOODYEAR.

3 Declarations of Interest.

None were received.

4 Application for Variation of Premises Licence for Indigo, 133-135 Seaside Road.

The proceedings had been adjourned at the hearing held on 27 April 2009. The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The legal adviser to the Sub-Committee advised that Mr Richards, barrister for Sussex Police should be permitted to respond to the submissions made by Mr Valls at the last meeting prior to the submission of final statements. As reported at the last meeting, an application had been made for an adjournment of the proceedings from the freeholder of the premises until a dispute concerning the lease and the legal entitlement of Exquisite Leisure Ltd to occupy the building had been determined. Since the last meeting the premises had been closed following action taken by the freeholder.

Mr Valls stated that issues in respect of the lease assignment were in dispute and that he had issued a counter claim against the freeholders and was seeking an injunction against them.

The Sub-Committee was advised that the applicant was not required to have a legal interest in the premises to submit an application and that the legal proceedings did not preclude the determination of the variation application.

The Sub-Committee agreed that the hearing should proceed.

Mr D Richards, barrister for Sussex Police drew the Sub-Committee's attention to the contents of the Cumulative Impact Policy and that the later hours sought would add to the existing levels of crime and disorder in the area. There was a strong likelihood that customers would visit the premises to consume alcohol. Intoxicated customers would be coming and going into the very early hours of the morning causing noise and disturbance to local residents. Use of the outside area for smoking and customers waiting and leaving in taxis would add to the disturbance. Local residents had made clear their concerns in respect of the application.

The applicant had failed to submit evidence to rebut the presumption of refusal contained within paragraph 4.2 of the cumulative impact policy and had offered no conditions over and above those contained within his current operating schedule. The tone of his letters sent to interested parties and his dealings with residents over the poster at the premises did not reflect well in terms of his approach to the concerns of residents.

Mr Valls stated his objection to the police being permitted to make further representations to the Sub-Committee. With regard to the issue of the poster,

he indicated that it had been censored and subsequently removed following contact with the Licensing Manager. He accepted that the contents of his letters to interested parties had been aggressive and regretted that local residents had been upset.

He made representations in support of the application had advised that he had successfully applied for 15 temporary event notices to operate until 4.00am on consecutive days and no complaints had been received. The problems in Seaside Road were acknowledged but there was no evidence that the management and operation of Indigo had caused problems. This was also the reason that no additional conditions had been offered as part of the application.

The maximum capacity of the venue was 150 but as customers must be seated and drinks served at tables the actual number permitted at any one time were approximately 50.

He indicated that he would accept a closing time of 6.00am on Fridays and Saturdays and a condition that last admissions would be an hour prior to closing at 4.00am and 6.00am.

The premises did not operate with less than two SIA door supervisors in attendance and this would be accepted as a condition of the licence. The clientele were not the type to cause noise and disturbance and door supervisors would assist with dispersal of customers and to ensure taxis did not cause a disturbance. The use of the outside smoking area would also be monitored by the door supervisors.

Music in the premises was played at a low level and the conditions submitted by Environmental Health were accepted although an option for the front door to remain open until 10.00pm to aid ventilation was requested.

Intoxicated individuals were not permitted to enter the premises. The primary business of the club was dancing and drinks were priced accordingly. Although he maintained that the dancers were not visible from the street, he would be willing to provide a curtained partition if this would allay concerns.

The Sub-Committee also acknowledged and took into account those letters of representation submitted from interested parties not present at the hearing.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted and the further evidence presented at the meeting, the four licensing objectives and the Council's Statement of Licensing Policy.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

RESOLVED: That the variation application in respect of Indigo, 133-135 Seaside Road be refused for the reasons set out in the attached appendix.

The meeting closed at 6.08 p.m.

**M Thompson
Chairman**

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Monday 27 April 2009 and reconvened on Tuesday 26 May 2009

- Applicant: Exquisite Leisure Ltd
- Premises: Indigo
133-135 Seaside Road
Eastbourne
- Reasons for Hearing: Relevant representations received from responsible authorities and interested parties under the prevention of crime and disorder and public nuisance licensing objectives.
- Parties in attendance: Applicant and representatives – Mr L Valls, Miss S Deacon, Mr G Dean and Mr P Langley.
- Responsible Authorities:
Sussex Police - Sergeant J Williams and Mr D Richards (Barrister).
Environmental Health Division - Mr A Albon
Planning Division – Mr A Battams
- Interested Parties – Councillors Mrs B Healy and S Wallis and Mr A Ley (Pevensey Road Residents Association).
- Licensing Authority:
Miss K Plympton (Licensing Manager) and Mr G Johnson (Regulatory and Litigation Lawyer)
- Decision made: That the application be refused on the following grounds:
- Reasons for Decision: The Sub Committee has refused the application for a variation of the Premises Licence having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003, the licensing objectives and the Council's Statement of Licensing Policy
- The Sub-Committee has weighed up the applicant's submissions alongside the representations made by the responsible authorities (Sussex Police, Environmental Health and Planning) and interested parties.
- The Sub-Committee did not consider that the applicant had provided sufficiently compelling evidence to rebut the presumption against the granting of the application arising from the Council's Cumulative Impact Policy. The application is therefore refused on this ground and that an extension of hours would undermine the licensing objectives relating to the prevention of Crime and Disorder and Public Nuisance.

Date of Decision: 26 May 2009

Date decision notice issued: 28 May 2009

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

RIGHT OF APPEAL

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant in the case of refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed on the licence.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.