



Licensing Act Sub-Committee - Record of Hearing held on Wednesday 15 August 2007 at 6.00pm

MEMBERS: Councillor Mrs MORRIS (Chairman); Councillors BELSEY and HARRIS.

1 Declarations of Interest.

None were received.

2 Application for Variation of Premises Licence for Bolton's, 4 Bolton Road.

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting. The Licensing Manager outlined the report detailing the application from Mr C Islip for a variation of a premises licence in respect of Bolton's, 4 Bolton Road. Reference was made to the Council's Cumulative Impact Policy which was adopted on 25 July 2007. The premises were located within the area identified as being subject to the policy.

Inspector N Porter, Sussex Police had made written representations as a responsible authority under the prevention of crime and disorder and public nuisance licensing objectives. Inspector Porter advised the Sub-Committee that Bolton Road was a vibrant town centre road which generated high levels of noise and incidents of disorder and was designated as the priority policing area from 7.00pm onwards on a Friday and Saturday. Objections were raised on the grounds that the number of customers to the venue and to Bolton Road would increase as a result of the regulated entertainment sought and lead to a "tipping" effect – where there is an increase in customers there is a presumption that there will be an increase in related crime and disorder. The police considered that this tipping effect undermines the principles of the cumulative impact policy.

The removal of the café/bar conditions from the rear garden area would allow the area to be used for vertical drinking and there were no proposals currently to limit the number of people permitted within the area. The removal of the conditions would allow for the use of the garden to be extended which in turn could allow for increased capacity and a subsequent increase in noise levels.

If the Sub-Committee was minded to grant the application the police requested a maximum permitted occupancy of 150 persons, which was in line with recommendations of a fire risk assessment undertaken in 2005. The conditions proposed by Environmental Health and the applicant should also be imposed.

In response to a question, Inspector Porter confirmed that police activity was not targeted at Bolton's over and above the other licensed premises in Bolton Road.

Mr R Fenton, Environmental Health had made written representations as a responsible authority under the prevention of public nuisance objective. A number of complaints had been received from local residents during the past 18

months regarding noise and anti-social behaviour in Bolton Road. Although the complaints had not been attributed specifically to Bolton's, there was a need to ensure that each bar in the area does not add to a cumulative effect with noise, which could potentially cause unreasonable disturbance to local residents.

It was requested that all forms of music should be played through a noise limiter at a level set by an independent consultant and that the outside area should be closed at midnight to all forms of licensable activity and the consumption of drinks. On being asked, Mr Fenton indicated that in his professional opinion, the conditions proposed by the applicants would in all probability be sufficient to control the noise emanating from the premises to an acceptable level.

The applicant's representative, Mr B Hall and the applicant Mr C Islip made representations in support of the application.

Mr Hall stated that the variation sought for regulated entertainment would not substantially change the nature of the operation. Three conditions were offered which would maintain a minimum number of tables and chairs in the garden, the provision of door supervisors and that no area should be set aside for dancing. He advised the Sub-Committee that the complaints made could not be attributed to Bolton's and that in general terms the police did not have any operational concerns with the conduct or management of the premises.

Mr Islip stated his wish to work with local residents and respond positively to their concerns and that he would be attending a residents meeting at the end of the month. Mr Islip advised on measures to eliminate noise nuisance by fitting self closing doors at both the front and rear of the premises. He said that he would be willing to accept the installation of a sound limiter.

With reference to the garden area, he advised that his current licence permitted its use until 2.00am. While Mr Hall had referred to the applicant's willingness to close the outside area at 00.00, Mr Islip indicated that he favoured closing this area no earlier than 00.30. He would prefer to maintain some flexibility regarding occupancy figures until a further risk assessment had been undertaken. In response to a question from the Licensing Manager, he acknowledged that he had received a warning from the licensing team for playing amplified music, which was not permitted under his current licence, and for inadequately controlling noise levels. The Licensing Manager confirmed that all the issues raised had been resolved to the satisfaction of the licensing team.

Written representations had been received from local residents living in the vicinity as detailed in the Licensing Manager's report.

Councillor N Stanley addressed the Sub-Committee on behalf of residents in Lismore Road. Bolton Road currently produced an unacceptable amount of noise nuisance and anti-social behaviour. The advice given by the police that the application would undermine the cumulative impact policy should be considered. The variation sought would change the nature of the operation and increase noise nuisance in the area.

Mr A Winterton raised concerns that a licence to provide late night music specifically targeted young people and would increase the number using the premises. The concentration of licensed premises caused significant problems for local residents. He queried how the applicant proposed to manage an increase in customers, particularly in the garden area, whether the building was

adequately soundproofed to prevent noise escaping and if windows would remain closed.

Mr J Town (also representing Mr Simmons) identified the problems currently experienced from loud music and anti-social behaviour and that the application would exacerbate the existing problems. He stated that no additional applications should be granted until the current situation was under control.

The Principal Solicitor advised the Sub-Committee of the requirement to consider each application on its own merits and regarding the relevance of the evidence submitted by all parties. As the application under consideration was for a licensed premise in an area where a cumulative impact policy is in place, representations made in respect of existing problems in the area which related to the problem of cumulative impact were admissible.

Mr S Henderson-Reid advised the Sub-Committee of the unacceptable behaviour he had witnessed, which was at such a level that his young daughter stayed elsewhere at the weekends. Although some noise was expected from living in the town centre, the disturbance created from general rowdiness as customers left the area was at an unacceptable level and could not be controlled. The application would increase customers and anti-social behaviour.

The Sub-Committee acknowledged and took into account the letters of representation submitted from interested parties who were 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. When the Sub-Committee reconvened the Principal Solicitor indicated that she had been called in to provide advice regarding the impact of the cumulative impact policy on this application and on the Section 182 Guidance.

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 Bolton's, 4 Bolton Road be refused for the reasons as set out in the attached appendix A.

3 Application for New Premises Licence for Shelter B, Lower Promenade.

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

The Licensing Manager outlined the report detailing the application for a new premises licence in respect of Shelter B, Lower Promenade.

Representations in support of the application were made by the applicant, Miss D Galli. She stated that she had been selected by the Council to operate the shelter and the type of activities proposed had been vetted by the Council. A management agreement with the Council set out the operational requirements and any functions proposed would require the Council's consent. A variety of entertainment would be provided and it was the intention to work in conjunction with the events on the Bandstand. As a new venture a degree of flexibility was sought to enable the business to develop.

In response to the concerns of local residents, an amendment that regulated entertainment would not commence before 12.00 noon was offered. During the course of the meeting she agreed to further reduce the hours sought for regulated entertainment until 11.00pm everyday of the week and that recorded music should be played at a background level. She would work with Environmental Health to ensure that events did not cause unreasonable noise nuisance or disturbance to the locality. She further stated her agreement to the imposition of other conditions relating to the location of speakers and the level of amplified music, provisions as to the use of non-glass receptacles and the need for signage regarding not removing them from the premises and the use of door supervisors at special events.

Written representations had been received from a number of local residents as detailed in the report.

Mr R Williams addressed the Sub-Committee and raised concerns that the extended hours for regulated entertainment could cause noise and disturbance and may encourage more young people to congregate in the area. He queried what measures would be in place to control customers and prevent them from wandering from the premises with drinks into the surrounding area. He welcomed the proposal to cease entertainment at 11.00pm and the additional conditions discussed.

Councillor D Elkin addressed the Sub-Committee on behalf of Mrs J Lamb and stated that the proposed finish time of 11.00pm for regulated entertainment would allay some of residents' concerns. This was a new venture for the seafront and had the potential to cause disturbance to others users of the promenade and the beach. In response to a question, the Licensing Manager reported that the consumption of alcohol would only be permitted in the building and within the terrace area.

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. When the Sub-Committee reconvened the Principal Solicitor indicated that she had been called in to provide advice regarding the wording of the conditions to be attached to the licence.

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

RESOLVED: That the application for a new premises licence in respect of Shelter B, Lower Promenade be granted as set out in the attached appendix B.

The meeting closed at 10.55 p.m.

Mrs S Morris
Chairman

Appendix A

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Wednesday 15 August 2007

- Applicant: Christopher Islip
- Premises: Bolton's
4 Bolton Road
Eastbourne
- Reasons for Hearing: Relevant representations received from responsible authorities and interested parties under the public nuisance and prevention of crime and disorder objectives.
- Parties in attendance: Applicant – Mr C Islip, Mr Myall and Mr B Hall (Licensing Consultant)
- Responsible Authorities:
Sussex Police - Inspector N Porter
Environmental Health – Mr R Fenton
- Interested Parties – Councillor N Stanley, Mr A Winterton, Mr J Town (also representing Mr Simmons) and Mr S Henderson-Reid.
- 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 and the licensing objectives.
- The Sub-Committee has weighed up the applicant's submissions alongside the representations made by the responsible authorities (Sussex Police and Environmental Health) and interested parties and considers that under the cumulative impact policy, the inclusion of additional regulated entertainment and the removal of café/bar conditions from the garden area would undermine the public nuisance and crime and disorder licensing objectives.
- The effect of a cumulative impact policy is to create a presumption against the granting of a licence and in this instance the Sub-Committee considered that the applicant had not succeeded in rebutting the presumption.
- Date of Decision: 15 August 2007
- Date decision notice issued: 21 August 2007

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.

Appendix B

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Wednesday 15 August 2007

Applicant: Dariana Galli

Premises: Shelter B
Eastbourne Promenade
Eastbourne

Reasons for Hearing: Relevant representations received from interested parties under the crime and disorder, public safety, protection of children from harm and public nuisance objectives.

Parties in attendance: Applicant – Miss D Galli
Interested Parties – Councillor D Elkin (representing Mrs J Lamb) and Mr R Williams

Decision made: To grant the new Premises Licence as follows:

(1) Standard hours:

Sale of Alcohol: (on & off the premises)

Monday - Sunday 08.00 – 00.00 hours

Regulated Entertainment: (indoor & outdoor)

Plays/films/live and recorded music/performances of dance/provision of facilities for making music and dancing

Monday to Sunday 12.00 – 23.00 hours

Late night refreshment: (indoor & outdoor)

Monday to Sunday 23.00 – 00.00 hours

Opening hours:

Monday to Sunday 08.00 – 00.00 hours

(2) Non-standard hours:

Finish time to be extended as follows for sale of alcohol, late night refreshment, regulated entertainment (excluding plays, films and live music) and opening hours:

Christmas Eve and New Year's Eve until 02.30 hours
Four days during the annual Airbourne Event - Thursday to Sunday until 01.30 hours

Subject to the following conditions (in addition to applicable mandatory conditions prescribed by section 19 of the Licensing Act 2003):

- i) A Security Industry Authority registered Door Supervisor shall be employed and on duty at the premises whenever a special function or event is held.
- ii) All beverages (hot and cold) shall be served in polycarbonate containers.
- iii) Customers shall be prevented from taking alcohol from the premises in open containers.
- iv) Notices will be displayed advising that customers are not permitted to take alcohol from the premises in open containers.
- v) The location of the speaker system and the level of amplified music shall be determined and set in conjunction with Environmental Health.
- vi) Recorded music will be played at a low, ambient background level only.
- vii) That a section of non-smoking tables be placed on the right hand side of the decking.

Reasons for Decision: The Sub-Committee has granted the application for a Premises Licence subject to the conditions and hours specified having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003 and the licensing objectives.

The Sub-Committee was satisfied with the submissions made in support of the application and acknowledged that this was a new venture for the seafront.

In recognising the concerns of local residents the Sub-Committee imposed a number of conditions in addition to the conditions offered by the applicant.

The conditions imposed were considered necessary to meet the licensing objectives of preventing public nuisance and public safety.

Date of Decision: 15 August 2007

Date decision notice issued: 23 August 2007

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

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