

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT FOLLATON HOUSE, TOTNES ON THURSDAY 17 OCTOBER 2013

Present: Councillors Baverstock, Pannell and Wright
T Johnson, Solicitor
K Trant, Member Services Manager, SHDC
N Wopling, Licensing Officer, SHDC

Also in attendance:

For agenda item 4: Mr Banner (representing the Applicant), Mr May and Mr Brown.

For agenda item 5: Cllr A S Gorman (local Ward Member); a representative from Environmental Health; Dr Hopwood (the Applicant), Mr Arnold, Mr and Mrs Smith and Mrs Edwards (local residents).

LSC.07/13 APPOINTMENT OF CHAIRMAN

RESOLVED

That Cllr Baverstock be appointed Chairman for the duration of the meeting.

LSC.08/13 DECLARATIONS OF INTEREST

Members were invited to declare any interests in the items of business to be considered during the course of the meeting but none were made. The Solicitor did advise that the Conservative Group Members, and in fact all Members of the Sub Committee, were not required to declare a personal interest in relation to the application Applicant being the Conservative Club because the Sub Committee was a regulatory non-political function and evidence based.

LSC.09/13 TO DETERMINE AN APPLICATION FOR VARIATION OF A CLUB PREMISES CERTIFICATE AT DARTMOUTH AND DISTRICT CONSERVATIVE CLUB, 8 VICTORIA ROAD, DARTMOUTH TQ6 9SA, IN ACCORDANCE WITH SECTION 85 OF THE LICENSING ACT 2003

1. Licensing Officer's Report

The Licensing Officer introduced the report to the Sub-Committee and advised that the application was for a variation to the existing club premises certificate as set out in the presented agenda pages. The summary of proposed changes was listed at appendix C of the papers and appendix D set out the representations, most of which focused on issues of noise. A number of conditions were already in place and these would remain.

Complaints had been received but these related to the nearby premises not the Conservative Club. To conclude, the Applicant agreed to lock the windows whilst any form of entertainment was taking place.

2. Address by the Applicant

The Applicant began by confirming to the Sub Committee that boards and soundproofing for the windows would be provided during entertainment. The windows would also be locked to prevent inadvertent opening by customers. The majority of issues raised in the objections related to the neighbouring premises; it was noted that most of the members of the Conservative Club were older and they tended to leave by taxi and stay in the Club until their taxi arrived. Those who left on foot moved swiftly away from the area. Members joined the Conservative Club for a safe and secure environment, not a pub atmosphere. He outlined the strict vetting procedure prior to Members being allowed to join. He also advised the Sub Committee that agreeing to the variations would not be setting a precedent as other venues in the vicinity had the same opening hours.

In response to questions the Applicant advised that the venue responsible for a number of complaints was immediately next door and separated only by a narrow lane in between. Many who left the other venue tended to gather outside and sit on the windowsills of the Conservative Club. He added that alcohol was not allowed outside. In response to another question he confirmed that sometimes the members from the Conservative Club found the other venue intimidating. He also confirmed that whilst the Club would like to be able to cater for events such as weddings, a member of the Club would have to be involved and no advertising would be allowed.

3. Address by the Representatives

Mr Brown advised that he owned the nearby hotel. The Conservative Club was mainly on the first floor of its building, opposite the hotel bedrooms. There was no suggestion of the Conservative Club being a bad place or being badly run, and it was in fact, one of the better licensed premises. However, it was situated next to a pub that continued to be problematic and it may be perceived to be difficult to tell who was causing the trouble. Mr Brown was quite clear about when and who was causing the disturbance. The Conservative Club had not been the subject of any formal objection, unlike other premises that were more problematic. The existing hours granted to the Conservative Club for music were felt to be just about bearable. There was a concern to him and to residents that mid week weddings were a new business opportunity that would attract a younger clientele.

There were two main issues, one was the music. Whilst the windows were closed when asked, the Conservative Club had to be asked and did not close them as a matter of course.

The music was extremely loud and could be heard over the TV in a guest bedroom. From a business point of view Mr Brown's guests were out and about until a certain time. However for some residents the level of music was substantial. The buildings were old and could only be soundproofed so far as any planning constraint allowed. Live music was always played loudly. At the moment, he could tell his guests that the music would finish at 2330 hours. The extension of hours did not seem much but if the music was clearly audible then people could not get to sleep.

The second issue was the street noise. Three or four people in the street talking loudly made a great deal of noise. Continuous groups leaving premises over a 45 minute period caused a disturbance. Although not enough for it to be a police matter, and not displaying disgraceful behaviour, but coming out of a venue where music was being played loudly made people talk loudly. Extending the opening hours to a later time becomes much more sensitive as the level of music was already at nuisance level.

Mr May explained where he lived in relation to the Conservative Club. He resided in an upstairs flat and it was more likely that he would be affected by noise in the street. The buildings in the street were old and the sound proofing was not entirely effective. The noise of the music had to be put up with until it finished. In addition, double glazing was not allowed therefore the noise of people talking outside was loud. People outside tended to sit on the windowsill of the downstairs flat. There was an old people's home in the vicinity whose residents have felt intimidated. The thought of more noise was unbearable.

4. Sub-Committee's Deliberations

During the deliberations, the Chairman sought clarification on the opening hours of the neighbouring venue. The Licensing Officer confirmed that some licences had a set noise level, however, this was not in place for the majority of premises.

(At this point, the meeting was adjourned to enable the Sub-Committee, in the presence of the Council Solicitor, to determine this application).

5. The Decision

The Sub Committee reconvened and the Chairman then proceeded to announce the decision as follows:

“We have considered the application for a variation to a club premises certificate. We have considered the Statement of Licensing Policy, the government guidance and our obligations that relate to the promotion of the licensing objectives.

We have read carefully the written representations from parties not present today and have read carefully representations received from parties present plus additional statements from persons here today.

We have decided that it would not be appropriate for the Club to provide live and recorded music later into the evening than nearby premises, thus adding to noise disturbance in the area. Therefore we have decided that live and recorded music should be provided during the same hours as permitted in the neighbouring public house. We have decided that the earlier start times requested for alcohol and opening should be granted, as this would not cause a nuisance to nearby residents. The hours granted are as follows:

Live and recorded music from 7.00 pm to 11.00 pm Monday to Wednesday, from 7.00 pm to 11.30 pm Thursday and Friday, from midday to 11.30 on Saturdays and from midday to 11.00 pm on Sundays, with the condition that during musical entertainment windows must be kept closed and locked.

Sale of alcohol from 9.00 am to 11.30 pm Sunday to Friday, 9.00 am to midnight on Saturdays, with closing times half an hour later.

Full details of all the activities and hours granted will be provided in the Decision Notice sent to all parties.

LSC.10/13 **TO DETERMINE AN APPLICATION FOR A NEW PREMISES LICENCE AT OASIS CAFÉ (PREVIOUSLY THRIVE CAFÉ), 47 FORE STREET, TOTNES, TQ9 5NJ, IN ACCORDANCE WITH SECTION 18 OF THE LICENSING ACT 2003**

1. Licensing Officer's Report

The Licensing Officer introduced the report to the Sub-Committee and advised that the application was for a new premises licence as set out in the agenda papers. A number of representations had been received and further information had been submitted by the Applicant. Consequently the license application had undergone a number of changes. The current position was that regulated entertainment would only take place inside the premises and there were changes to the opening hours. The changes had been agreed with the Police and there were additional conditions such as CCTV being fitted to cover the outside of the premises. The changes proposed had not addressed all concerns. Following representations about the use of the upper terrace area at the back of the premises it had been proposed to withdraw that area from the licence.

The majority of representations related to noise nuisance. The Environmental Health Department had also registered their concerns. There was also the issue of the outside steps at the rear which were once a fire escape but that was no longer the case as the upstairs area was no longer being used as a residential flat. The Fire Officer had visited and was satisfied with the escape procedures. The Applicant had requested alcohol sales on and off the premises and confirmed only sealed containers could be taken off the premises.

2. Address by the Applicant

The Applicant addressed the Committee and advised that following a successful planning application for a café/ restaurant he would now like to offer an alfresco dining area. He hoped to create a café based on health that offered organic produce and wines and a more European atmosphere. The amendments to the licence application had arisen from a number of meetings and he appreciated that his initial application included elements that he did not need to include as he did not require them. He agreed to withdraw use of the upper terrace in the evenings but would still like to use the back garden as well as the seating outside the front of the property.

3. Address by the Environmental Health representative

The Environmental Health Officer advised that concerns had been raised with the initial planning application over the transformation of the premises. Assurances were given at the time that the premises would be used as a health café to support treatment. However, now there was an application for an entertainment licence which was a departure from the original ethos and a noise management plan had been requested but not received. The current request was for background music only although a previous request had referred to youth nightclub nights. There were a number of residential properties in the area and there were concerns over whether the building could contain the noise. If the intention was for a bar/restaurant it would be acceptable as there would be no need for live or recorded music. However, if the proposed use was for social entertainment, bands etc. the premises would not be suitable. If the Sub Committee were minded to approve the application then he would suggest conditions to prevent public nuisance, and that noise emanating from the premises would not cause a nuisance and that a diary or log be kept by the Designated Premises Supervisor. Finally, an acoustic survey should be undertaken to assess how well the shutters contained noise.

At this point and in response to questions from the Chairman, the Applicant confirmed that he did not require a licence for bands but had in mind perhaps a solo musician such as a guitarist playing whilst customers were dining. The Licensing Officer confirmed that music that was not amplified could be played anywhere at any time.

4. Address by the representatives

A statement was read out that had been received by the Council from the representatives.

5. Address by the District Council Ward Members

Cllr Gorman stated that he sensed the Applicant had made great efforts to accommodate concerns raised and perhaps it would have been wise to do this before the application had reached this stage. It was a little confusing to have so many changes made to the application and perhaps a tick box list to summarise would have been helpful. Living in a town centre would result in some noise, but there was a question of proportionality. The fact that the licence could be revoked was an influencing factor and the CCTV would help with the collection of evidence. His inclination would be to support the licence application but with any conditions attached to it to be explicit and clear.

6. Sub-Committee's Deliberations

The Sub-Committee discussed the application during which clarification was sought in respect of the size of the premises. Confirmation was also given that the request was now for background music and music without amplification. This lessened the objection of the Environmental Health Officer. In respect of the wish for a youth nightclub the Applicant advised that there was nowhere in Totnes for young people to go and he was aiming at the 18 to 25 years age group, not those who were under legal age for drinking.

(At this point, the meeting was adjourned to enable the Sub-Committee, in the presence of the Council Solicitor, to determine this application).

7. The Decision

The Sub Committee reconvened and the Chairman then proceeded to announce the decision as follows:

"We have considered the application for a new premises licence. We have considered the Statement of Licensing Policy, the government guidance and our obligations that relate to the promotion of the licensing objectives.

We have read carefully the written representations from parties not present today and have read carefully representations received from parties present plus additional statements from persons here today.

We have decided that it would not be appropriate for live or recorded music to be included on the premises licence. The provision of plays, films and performance of dance indoors only will be permitted as requested, with the condition that all doors and windows must be kept closing during entertainment.

We have decided that to support the licensing objectives, it would be appropriate to incorporate the additional conditions agreed between the Applicant and the Police as listed in appendix C.

To reduce the public nuisance caused to those residing in the flats behind the premises, we have decided to include an additional condition preventing people from smoking in the outside rear areas (area C & D on the premises plan) and to restrict the hours of use of the 'upper terrace' (area D). Full details will be given in the Decision Notice, provided to all parties.

(Meeting commenced at 10.00 am and concluded at 12.55 pm)

Chairman