

**MINUTES OF THE SPECIAL LICENSING SUB-COMMITTEE C
THURSDAY, 13 NOVEMBER 2008**

Councillors Baker, Beacham (Chair) and Dodds

Also Present: Councillor Scott

MINUTE NO.	SUBJECT/DECISION	ACTON BY
LSCC01.	<p>APOLOGIES FOR ABSENCE</p> <p>There were no apologies for absence.</p>	
LSCC02.	<p>URGENT BUSINESS</p> <p>There were no items of urgent business</p>	
LSCC03.	<p>DECLARATIONS OF INTEREST</p> <p>None received.</p>	
LSCC04.	<p>SUMMARY OF PROCEDURE</p> <p>Noted.</p>	
LSCC05.	<p>BAR APOGEE, 115 PARK ROAD N8 8JN (CROUCH END WARD)</p> <p>Ms Dale Barrett, the Lead Licensing Officer, clarified at the start of the meeting whether Ms Anastasia Pieris, premises owner had received the letters from the applicants dated 9 and 10 November 2008. In response the Ms Pieris confirmed she had received copies of the letters.</p> <p>The Licensing Officer presented the statement in support of the review application and outlined that noise was the major problem throughout the history of the premises. The Noise Team had provided a history of the premises since 15 April 2007. The team had visited on several occasions which had resulted in the issue of warning letters and abatement Notices under the Environmental Protection Act 1990. Representations had been received from the previous owner of the premises Mr John Macdougall, who lived on Park Road and had never heard any noise that could definitely be attributed to Bar Apogee.</p> <p>Mr Danny Bull, applicant for the review, informed the meeting that he had attended the Committee previously in 2007 to make representations against the noise and object to the application for licensed entertainment and later opening hours. A sound limiter had been fitted, however as he lived quite close to the bar, he could still hear noise and felt that the limiter was not doing its job. Mr Bull further stated that on many occasions the bar had remained open well past its licensable hours, playing music and admitting patrons after hours. Mr Bull also requested whether it was possible to impose some restrictions on the number of temporary event licenses granted.</p>	

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Mr Tim Newcombe, applicant for the review, advised that the grounds for the review were set out in the application. The applicants who had applied for this review had all attended the hearing in February 2008, as well as a number of local residents who had been disturbed by noise nuisance since Bar Apogee had started trading. Mr Newcombe informed the Committee that the situation had not improved as they were still being disturbed, therefore they had no other option but to submit the review application.

Mr Slater, a local resident, addressed the Committee and agreed with his neighbours. He had hoped that the recommendations of the Committee at the last hearing in February 2008, would have been implemented so that residents could have some peace on a week day night.

Mr Goldie, another local resident, advised the Committee that at the last hearing in February, attempts had been made to blame the street noise on the Princess Alexandra Public House. The Committee was informed that this public house had been closed for four months undergoing refurbishments and there had been no change to the noise in the street.

In response to questions from the Committee, the applicants and local residents stated that they wanted a review of the Bar Apogee building, sound proofing and a reduction in the noise from music, by a decrease in operating hours.

Ms Barrett, at this point clarified that the licensee had applied to vary the licence in early 2008, and conditions had been applied by the Licensing Sub Committee, however the licensee had not taken up the new licence with conditions and the existing licence was not surrendered.

Mr Derek Pearce, representing the Noise Team, stated that in February 2008 a number of conditions had been recommended to be attached to the licence and it was now felt that those conditions needed to be attached to the review. It was further stated that if the premises remained open then the Noise Team would continue to receive complaints from local residents. In November 2007 the Noise Team had made recommendations for reduced opening hours and had been in attendance at the premises when they were open past their operating hours when no temporary event licence had been issued.

In response to a question raised by the applicants Mr Pearce advised that due to the levels of music played over the last year the premises would need more sound proofing although the premises may also need a mechanical air conditioning unit.

Ms Pieris, the Licensee, stated that sound proofing foam had been installed throughout the building and a limiter was set to a level where it could not be tampered with. The previous owner had stated in his letter of representation that the licensee had done more to reduce noise nuisance than he had. Ms Pieris further stated that the Police had made no objections to this review as sufficient staff were provided at all times.

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Conditions imposed at the last hearing had been adhered to even though they were not on the current licence. For example no one under the age of 18 was allowed into the bar. Ms Pieris also stated that there was not enough evidence to warrant the review as the premises was not a night club but a bar. The number of people who entered the bar each evening was monitored by door staff using a counting device. Ms Pieris drew the Committee's attention to the representations of 25 residents who lived in Park Road, who had stated that they had never heard noise nuisance from the bar.

In response to questions from the Committee Ms Pieris explained that she would be agreeable to the conditions requested by the Noise Team and would not have a problem attending regular liaison meetings with local residents. The applicants stated that the bar was entrenched, money had been spent to sound proof the premises, however since February 2008 when the Committee had last met, there had been no improvements. It was acknowledged that if the noise stopped there would be no need for regular liaison meetings.

The applicants questioned the licensee who responded that the system used for playing music was the same used by the previous owner, although two extra speakers had been added, the windows had been sound proofed, and had no objections to the sound proofing being reviewed at the premises.

Ms Barrett reiterated that the new licence applied for in February 2008, was never issued to the licensee as the conditions imposed on the licence were not implemented. Ms Pieris was informed over the telephone that the old licence still applied and this was also confirmed by officers in the Licensing Service. A letter was further sent to Ms Pieris to remind her that only one fee had been received for the first licence.

Cllr Scott entered the meeting at 8:25pm.

The applicants further questioned the licensee on whether it was possible to reduce the noise level on the sound limiter. The licensee replied that the limiter had been set to its level by the Council, specifically by the Noise Team.

Ms Bilbao, the legal officer, queried the records provided by the noise team in relation to visits where nuisance was not found and whether the premises had been open beyond licensable hours. In response the Noise Officer confirmed that in order to establish noise nuisance it needed to be measured from a residential home. Two abatement notices had been served in the last eighteen months and statutory nuisance had been established on two occasions. There were incidents, primarily on Sunday nights when officers had witnessed the premises open past operating hours.

Ms Bilbao further questioned the licensee as to whether the premises were hired out for private functions and if so how often, during what times and who produced the literature for the specific events. The

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licensee replied that when the premises were hired out, that as the owner of the premises she was always in attendance and that the door supervisors decided how many people were admitted in. Ms Bilbao drew the Committee's attention to page 74 of the agenda and outlined that the event literature stated a capacity of 200 people, however the current licence stated that the premises should not exceed 150 people.

In summary Ms Barrett, advised the Committee that it was for the Licensee to employ an independent acoustic company to look at the sound limiter and submit a report to the Noise Team, who would then engage with the Company that the licensee had chosen to use.

Mr Pearce further explained that given what had been stated during the hearing there was a request for a condition that the noise should not be beyond residents boundaries.

The applicants summed up their case by stating that the noise levels were too high, there had been breaches of the current licence and asked the Committee to look at the facts and further requested that the operating hours be reduced due to the excessive noise.

Ms Peiris addressed the Committee in summary and stated that the hours should not be reduced, was acceptable to liaising with residents, would have the limiter checked and would do her best to minimise the noise levels.

RESOLVED

The Special Licensing Sub Committee (the Committee) decided to uphold the review application by modifying the conditions of the licence. In determining the application the Committee considered the steps that it could take in order to promote the licensing objective for the prevention of public nuisance. The Committee decided:

1. To take no further action: This was not an option based on the representations heard.
2. To issue formal warnings to the premises supervisor and/or premises licence holder: This was not an option based on the representations heard.
3. Modify the conditions of the licence: This the Committee decided to do.
4. Exclude a licensable activity from the scope of the licence: This was considered not to be proportionate with the evidence heard.
5. Remove the designated premises supervisor: This was not an option.
6. Suspend the license for a period not exceeding three months: This was considered to not be proportionate.

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7. Revoke the licence: This was further considered to be disproportionate based on the evidence heard.

The current licence and any conditions attached to it shall remain, save as amended or added to as follows:

1. Supply of Alcohol

- Monday to Thursday 10:00 to 00:00
(final hour ancillary to substantial refreshment i.e. food)
- Friday 10:00 to 02:00
- Saturday 11:00 to 02:00
- Sunday 12:00 to 22:30

2. Regulated Entertainment

- Monday to Thursday 10:00 to 23:00
- Friday 10:00 to 02:00
- Saturday 11:00 to 02:00
- Sunday 12:00 to 22:30

3. Provision of Late Night Refreshment

- Monday to Thursday 23:00 to 00:00
- Friday and Saturday 23:00 to 02:00
- Sunday No provision.

4. Operating Hours

- Monday to Thursday 10:00 to 00:30
- Friday 10:00 to 02:30
- Saturday 11:00 to 02:30
- Sunday 12:00 to 23:00

1. All doors and windows shall remain closed at all times. Where a door is used for people to enter or leave the premises, the door will be fitted with a self-closing device and staff told to ensure that it is not propped open.
2. The applicant shall obtain a report from an acoustic consultant within three months of the date of this hearing (13.11.08) to ensure that the level of all entertainment can be controlled by means of a limiting device and shall be controlled by that device (including live music). Any recommendations including the level of the device shall be agreed in writing by the Licensing Authority. The Local Authority shall confirm in writing when this condition has been complied with. The Licensee shall ensure that no music is played in the licensed premises is audible at or within the site boundary of any residential property.

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3. No music will be played in, or for the benefit of patrons in the external areas of the premises.
4. No form of loudspeaker or sound amplification equipment is to be sited on or near the exterior of the premises or in or near any foyer, doorway, window or opening to the premises.
5. A complaints book will be held on the premises to record details of any complaints received from neighbours. The information is to include where disclosed, the complainants name, location, date, time and subsequent remedial action undertaken. This record must be made available at all times for inspection by Council officers.
6. Where people enter and leave the premises, there will be two licensed door supervisors between 22:00 and the closing of the premises, to supervise and ensure that people leave in a courteous manner and to use a counting device to monitor capacity at the premises, between 22:00 and the closing of the premises.
7. The licensee shall obtain an expert's report within three months of the date of this hearing (13.11.08) in relation to the sound proofing of the premises, having regard to all the licensable activities, and any recommendations shall be agreed with the Local Authority and the applicant shall obtain a written confirmation from the Local Authority showing that these recommendations had been implemented.
8. Children under the age of 16 attending family functions must be accompanied by an adult at all times.
9. No new entrants to the premises shall be permitted after 11:00 Monday to Saturday.
10. A digital CCTV system will be installed and maintained on the premises including outside the main entrance and car park area.
11. The CCTV system will be recording at all times when the premises are open and the recordings shall be made available to the police and Local Authority upon request. All recordings shall be kept for three months and be of sufficient quality for evidential purposes.
12. No alcohol shall be consumed within the external boundary of the premises including the car park and no bottles to be taken outside the premises except for off sales.
13. Signs will be displayed at the exit reminding customers to leave quietly and respect the neighbours.

In reaching this decision the Committee took into account the concerns raised by the applicants and supported by the Noise Team that there was a problem with noise and late opening on several occasions. The Committee took into account the Licensee's representations but found that these breaches of the licence had occurred. The Committee felt

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	<p>that the remedy was to review the licence and add the appropriate conditions to the current licence.</p> <p>The Committee took into account the human rights of the Licensee, the protection of property which may include licences in existence and the protection of private and family life. The Committee was aware of the importance of the licensing trade to the local economy, its culture and leisure aspirations. The Committee felt that this was outweighed by the Licensing Authority's duty to take steps with a view to the promotion of the Licensing Objectives and in particular the prevention of public nuisance in the interests of the wider community.</p>	
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Cllr David Beacham
Chair