

Licensing Sub-Committee – 22 February 2012

Minutes of the meeting of the **Licensing Sub-Committee** held on **22 February 2012** when there were present:-

Cllr Mrs P Aves
Cllr K H Hudson

Cllr M Maddocks

OFFICERS PRESENT

N Khan	- Principal Solicitor
P Nellies	- Licensing Officer
D Waite	- Environmental Services Manager
S Worthington	- Committee Administrator

121 APPOINTMENT OF CHAIRMAN

Cllr K H Hudson was appointed Chairman of the Sub-Committee.

122 DECLARATIONS OF INTEREST

Mr N Khan declared a personal interest by virtue of being acquainted with one of the applicant's witnesses.

123 PROCEDURE FOR LICENSING HEARING

The Sub-Committee noted the procedure to be followed during the hearing.

124 LICENSING APPLICATION – LICENSING ACT 2003

Baroque, Unit 1, 68 – 72 West Street, Rochford, SS4 1AS

The Sub-Committee considered an application for variation of a premises licence made under section 34 of the Licensing Act 2003. The application relates to a premises known as Baroque, Unit 1, 68 – 72 West Street, Rochford, SS4 1AS. Members had before them the report of the Head of Environmental Services setting out the details of the application and the documentation and representations received from the applicant, Environmental Health and various interested parties.

Copies of a plan showing the locations of the application premises and the locations of the properties of the interested parties were circulated to all those present. Copies of a letter confirming that one of the representations from interested parties was invalid, of an email from the applicant's solicitor and of a further representation received from an interested party were also circulated to all those in attendance.

In response to a specific question from the Chairman relating to a reference to the use of colour in the readings in the second paragraph on page 4 of the acoustic report, the applicant's representative confirmed that this referred to the graph on the following page of the report, i.e. page 5.

The applicant's representative advised that the applicant was applying to extend the premises licence from midnight to 0100 hours on Thursday, Friday and Saturday. This was to secure the viability of the business in response to the demands of customers and would bring the hours of operation in line with the operating hours of other licensed premises within the locality.

In response to concerns raised by residents about noise emanating from the premises when the business first started up, the applicant had commissioned an acoustic report. The applicant has already implemented many of the recommendations detailed within that report. The Council's Environmental Protection Unit has confirmed that it has no objection to the variation, provided that its suggested conditions are complied with. The applicant's representative confirmed that the applicant is willing to agree to all of these conditions.

The applicant's representative advised that the first 3 conditions proposed by the Environmental Protection Unit (EPU) have already been implemented, but the level of the noise limiter has yet to be set by the EPU. He further stated that when the business first started, the fire exit doors had been left open and used as an entrance for people smoking outside. This had been ill advised and in response to concerns expressed by residents had now been stopped. It was not, he emphasised, in the interests of the applicant to alienate local residents, as this could result in a review of the premises licence.

The applicant's representative drew particular attention to the contention within representations made by interested parties that the business was located in 'a quiet, residential haven'. He asserted, however, that the premises were in an urban location, on a busy road, close to the railway station, restaurants, supermarket and other pubs. He further emphasised that the business was a bar and not a night club. Applications had been made for temporary events notices over the Christmas / New Year period. A DJ was employed by the premises to play recorded, not live, music. No admission charge was made.

The applicant's representative stated that migratory drinking will be further discouraged by bringing Baroque's operating hours in line with those of neighbouring licensed premises. Extending the licensing hours would reduce the potential for concentrations of drinkers to exit the premises at the same time, but would stagger customers leaving the premises.

He further emphasised that since the applicant had put in place some of the soundproofing measures recommended in the acoustic report there had not been any complaints from residents; the wall at the far end of the premises, by the fire exit, had been fitted with noise attenuation materials.

He advised that the applicant was, in addition, volunteering some additional conditions, namely:-

- A telephone number will be supplied to residents of a senior member of staff in order to raise any concerns.
- A member of staff will patrol the perimeter of the premises at regular intervals to ensure that noise levels are not excessive; a record will be kept, including details of times and any actions taken.
- Signs to be placed at the entrance and exit to the premises reminding patrons to leave the premises quietly, respecting residents' peace and quiet.
- From midnight onwards no drinking vessels will be taken outside the premises.

The applicant advised that his family has owned a number of golf clubs in the Essex area over a number of years; licensed premises regularly holding large functions. He has approximately 23 years' experience of managing licensed premises.

The applicant accepted that mistakes were made when Baroque first opened, but he has made every effort to rectify these, including keeping the fire doors closed and installing noise attenuation/strengthening materials; he has taken concerns raised by residents very seriously. His vision is that of a long-term business, a wine bar, catering for more mature customers. The premises has adopted an over-25 policy for male customers and stocks more expensive brands of drinks in order to attract more mature customers.

He confirmed that 2 door staff are employed at the premises, from 8.00 pm until 30 minutes after the end of the licensing hours. Since putting in place many of the recommendations contained within the acoustic report he has not received any complaints about noise. He considered that an acceptable level for the noise limiter, since all the noise attenuation measures have been put in place, is 90dB(A).

He confirmed that he has been at the premises during opening hours since the business started up and there have not been any fights outside the premises during this time. He further advised that he has a good working relationship with the Police, who did not object to the application for variation of the premises licence.

Mr Aksoy, a resident who had been living opposite the premises in West Street for approximately 2 years, stated that when the bar first opened he could hear noise, mainly bass from the music. Recently, however, the noise has improved and he does not hear any noise emanating from the premises.

In response to questions, the following points were noted:-

- The Marlborough Head opens until 1.00 am and Stavros Kebabs is open until 3.00 am.
- The EPU was awaiting receipt of the noise limiter certificate.
- One of the conditions requested by EPU was that bins be provided adjacent to the entrance to the premises for cigarette butts and other waste from patrons.
- The age limit of customers is controlled by operating the Challenge 25 scheme; anyone who looks under the age of 25 is asked to produce appropriate identification.
- The applicant has delivered leaflets to local residents advising them of what measures have been taken to address the issues relating to noise and trying to open a dialogue with them in order to ascertain whether there are any further problems.
- Staff will be trained to ask patrons to leave the premises quietly and to point out the proposed signs at the exit. There will be a 'winding down' time towards the end of the evening, a period of 15 minutes when the music will be turned down in order to try and ensure that the premises are exited quietly by customers.
- A total of 12 temporary event notices (TEN) can be issued to licensed premises per annum for up to a total of 15 days per annum. Baroque has been issued with 3 TEN to date, for a total of 6 days.
- The premises' policy of restricting entry to male customers of over 25 years is in an attempt to prevent large groups of youths from coming in. There have not been any problems with large groups of women and, as such, entry has not been similarly restricted for them.
- The Police have confirmed that there is not a problem with under-age drinking at the premises.
- The bass speaker on the premises' sound system is not used; only the mid-range speakers are used.

The Environmental Services Manager confirmed that the District Council had received a number of complaints relating to Baroque and had contacted the owner directly. The owner was co-operative, doing what officers requested. EPU officers were satisfied that, provided all the suggested conditions were implemented by the owner, there should be no further complaints. It was, however, possible that any future issue of TEN for the premises could result in problems; however, the owner had, to date, proven very co-operative. EPU would monitor the situation.

In response to further questions, the following points were noted:-

- EPU had requested receipt of the noise limiter certificate within 3 months of the hearing. The owner confirmed that a copy of the certificate was available and would be forwarded to EPU immediately.
- The noise limiter was currently set at 90dB(A) and the owner was willing that this be the maximum level at which this should remain, unless EPU determine otherwise.
- Drinks were decanted out of bottles on the premises into toughened glass or polycarbonate vessels.
- No drinking vessels should be taken outside the premises at any time, as this was a condition of the current premises licence.
- The EPU would approach the owner in the future if it was felt necessary to introduce any further measures.

A local resident, who lived in the vicinity of the premises, expressed concern that, if the application to extend the opening hours to 1.00 am on Thursday, Friday and Saturday was approved, the quality of life of those residents living in close proximity to the premises would be compromised. He also considered that this could lead to more premises applying to extend their opening hours.

Cllr Mrs G A Lucas-Gill, speaking on behalf of Alburn, who owned the flats in Union Lane opposite the premises, emphasised that noise and public disorder had been experienced by tenants of the flats since Baroque had opened. She further stressed that there had been no noise attenuation. On 29 January 2012 ambulances had had to be called and there had been a lot of clearing up needed outside the premises.

In response to questions from the applicant's representative, the local resident confirmed that he lived approximately 400-500 yards away from the premises and was able to hear noise emanating from there, although confirmed that he was unable to give specific examples. He further emphasised that, although he was unable to provide evidence of any specific behaviour linked to the premises, he wanted to prevent this from happening and considered that extending the opening hours could result in public nuisance.

In response to questions from the applicant's representative, Cllr Mrs G A Lucas-Gill confirmed that she had tried to persuade residents to attend the hearing, but that many of them felt intimidated and did not wish to attend. She further confirmed that, on walking past the premises, she has seen cigarette butts and vomit on the ground. She also confirmed that she has still received some complaints from residents since the premises has put in place noise attenuation measures, although not as many as previously. She was pleased to hear that there would be no drinking outside the premises in future.

In conclusion, the applicant's representative emphasised that his client had reduced the number of hours originally applied for. The Police had not attended this hearing and only one resident had attended to object to the application. The applicant had every intention of working closely with local residents to ensure that there were no further problems. He did not want there to be any future request for a review of the premises licence.

The Sub-Committee retired from the Chamber with the Legal and Member Services officers to consider the decision, returning for its announcement.

Having given careful consideration to the application and all representations made, the Sub-Committee considered that the application for variation of the premises licence should be granted. It did, however, recognise the concerns expressed by local residents and the impact the variation of the licence might have on them. Particular regard was also given to the fact that these residents live in close proximity to the premises.

It was, however, felt that the conditions recommended by the Environmental Protection Unit would result in there being no further noise nuisance. Furthermore, it was emphasised that, in the event of there being any future disturbance arising as a result of this variation to the licence, there is a power of review available to interested parties and Responsible Authorities.

Resolved

That the application to extend the hours to 1.00 am on Thursday, Friday and Saturday be granted, subject to the following conditions being added to the existing premises licence and subject to the first twelve conditions listed below being implemented within 3 months from today's date, and subject to noting that condition 22 of the licence be deleted:-

- Only the currently installed overhead speakers shall be used for the amplification of speech and music within the premises.
- All overhead speakers and the fire exit doors in the eastern wall shall be routed through a calibrated noise limiter set at a level agreed by the Environmental Protection Unit.
- The microphone for the noise limiter shall be located in the 'quiet zone' located at the opposite end of the bar to the decks.
- The noise limiter shall be tamper-proof and only ever accessed by the DPS.
- Heavy gauge material (or similar) shall be installed at the bar's entrance, along the eastern wall and the ceiling in order to minimise reverberation and noise 'leakage'.

- The fire exit doors in the eastern wall shall be replaced with well-fitted acoustic doors.
- A definitive plan of the bar and this amplification system shall be supplied to the Licensing Unit.
- All calibrated equipment must be maintained in the approved form for the duration of the premises licence.
- Any changes to the amplification equipment, noise limiter or noise management techniques referred to in the above conditions will require variation applications.
- The fire doors in the eastern wall shall only be used in case of emergency.
- For the duration of the final 15 minutes of opening on any night, only background music shall be played.
- Additional bins shall be provided by the operator adjacent to the entrance for cigarette butts and other waste from patrons.
- A dedicated telephone number should be supplied by the operator to local residents to enable them to contact the premises at any time with regard to any concerns or complaints they should have, a record of which shall be kept and made available for inspection.
- A staff member should patrol the perimeter of the premises at regular intervals to assess the level of sound and any other problems, a record of which to be kept with details of times and any action taken.
- Appropriate signage to be placed at the entrance and exits of the premises, which shall remind patrons to leave the premises quietly and not to cause any disturbance. (HES)

The meeting commenced at 10.00 am and closed at 1.50 pm.

Chairman

Date

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