

**LICENSING REVIEW SUB-COMMITTEE
24 APRIL 2014**

Present: Councillors Dowling, Poole and Webb (in the Chair)
with Councillor Cooke in reserve.

1. APPOINTMENT OF CHAIR

In accordance with the terms of reference of the Licensing Committee, the Principal Solicitor invited nominations for the appointment of Chair for the duration of the meeting. Councillor ***** moved that Councillor ***** should take the Chair. This was seconded by Councillor *****.

RESOLVED (unanimously) that Councillor *** be appointed as Chair for the duration of the meeting.**

2. MINUTES

RESOLVED – That the minutes of the meeting held on 17 December 2012 be approved and signed by the Chair as a true record.

3. DECLARATIONS OF INTEREST

Councillors made no declarations of interest at this meeting.

4. APPLICATION FOR THE REVIEW OF A PREMISES LICENCE: BAR MODA, QUEENS ROAD, HASTINGS

Councillor ***** set out the procedure that the Sub-Committee would adopt (in accordance with Standard Practice), all parties confirmed they understood this.

The Corporate Director, Environmental Health, submitted a report on an application for the review of the premises licence for Bar Moda, 206 Queens Road, Hastings.

Mr Brown, Licensing Manager, presented the report.

~~Mr Spink, Counsel made submissions on behalf of Hastings Borough Council as the applicant seeking the review. Mr Spink stated that this review was for the reduction in opening hours and the sale of alcohol; removing live music and limiting recorded music, including karaoke. The review was supported by a number of representations received from local residents who had written letters and a diary regarding ongoing issues with the premises.~~

~~The Committee were informed by Mr Spink, that PC Ash and Mr Bell, Environmental Health Officer were absent due to sickness and due to the urgent nature of the review, the meeting should continue in their absence. Mr~~

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Casey, Environmental Protection Manager was present and able to answer any questions Members had based on what was recorded in the file.

Mr Spink submitted that the unsigned statement of PC Ash which had been sent to Mr Bell ought to be admitted in evidence which met with the approval of the Committee. With the agreement of the Chair and Mr Farhall, the Premises Licence Holder, Mr Spink circulated the statement which detailed PC Ash's involvement with the Wishing Tree Public House since July 2010.

The meeting adjourned for 10 minutes for copies to be made of PC Ash's statement and the Committee and interested parties to read the statement.

Mr Spink spoke regarding the extent of the problems at the Wishing Tree Public House. He referred to letters received from neighbouring residents and also entries from diary sheets dated between 24 August 2010 to 13 August 2012 documenting noise and disturbance, which had been submitted by a neighbour. The residents were present in the public gallery and supported the review.

Mr Spink went on to say that Mr Farhall took over the premises in July 2010 and that it wasn't until September 2011 that Mr Bell became aware that problems at The Wishing Tree Public House were continuing. During this time PC Ash had monitored the problems and after consultation with residents and community police colleagues an action plan was imposed to enforce the managing of the pub. The action plan was designed to eliminate drugs; provide greater awareness of serving drunks, manage refusals, and eliminate violent and anti social behaviour. CCTV would also be installed. By embracing the help of the police and Hastings Borough Council Officers, the objective was to create a community pub which supported the licensing objectives. The action plan was signed by Mr Farhall in March 2011 and it was to last for the following 3 months. Initially the situation improved, but problems reappeared in September 2011.

In his statement, PC Ash had listed a number of incidents when he had observed patrons using the smoking shelter after 22:00hrs, in contravention of planning consent. On another visit he observed a live band playing at 23:10hrs and patrons hanging around the premises after 03:00hrs. A number of measures were implemented to try and address these problems; for example, a visit was made to the local community to establish how bad the noise issues were and to evaluate the impact of the pub on residents; a street meeting was arranged for residents to air their views and to resolve issues with the pub, and PC Ash arranged for the installation of a multi agency camera to be positioned near the pub to record activity.

Mr Spink referred to Mr Bell's statement in which he had stated the Environmental Protection Team had obtained several recordings of noise emanating from the premises, one of which was taken from a resident's bedroom after 00:12hrs. Mr Bell had also stated that from September 2011, he had documented 31 noise and disturbance complaints as a result of

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activity from the premises. Approximately 12 of the incidents had been since the revised operating arrangements were said to be in effect.

Mr Spink said that in April 2012 Mr Farhall was advised that improvements had not materialised with addressing noise issues and again Mr Farhall voluntarily agreed to revert back to traditional hours, with last orders being at 23:00hrs and terminal hours at 23:30hrs. The new hours would begin after 21 days thereby allowing patrons to adapt to the new reduced times. PC Ash continued to monitor the premises, but the problems continued, and again the agreement had not been implemented by Mr Farhall.

In his conclusion, Mr Spink said there was concern for the future of the Wishing Tree Public House, contributed by the attitude of Mr & Mrs Farhall in maintaining their belief the incidents did not relate to premises and that they had been victims of a conspiracy by PC Ash and Mr Bell. This he said accumulated in denial for what was obviously a problem. He referred to Mr Farhall's petition of support for the Wishing Tree Public House in keeping its late licence, stating that a number of the petitioners did not live in the area. Mr Spink went on to say that Mr Farhall had said he could not make a living if the operating hours of the premises were reduced, this he explained was not relevant in licensing law; the purpose of the review was to impose conditions to help resolve the existing problems.

In his submission, Mr Farhall, the Premises License Holder, informed the Committee that a number of statements were not true. He said of the 31 complaints, 12 complaints had been made in the last 3 months by one or two people. He said when they took over the pub it had a bad reputation initially, but they got rid of most of the elements causing the problems. He said in September 2011 he received a letter from Mr Bell regarding noise saying that he needed to sort it out, but received no further contact from Mr Bell during the following 6 months until April 2012 when he was visited by both Mr Bell and PC Ash. He said he agreed under duress to revert back to the original closing hours for a 3 week period. Furthermore, he said he kept a diary and monitored noise, but felt the noise had arisen from various sources such as people in the park; feuding neighbours living in the road and traffic turning within the cul-de-sac. Since July he said he stopped serving drinks after 22:00hrs, lights were turned off and the smoking shelter was no longer heated after this time, and because of the breakout of noise outside the smoking shelter he had asked people to stay inside. Mr Farhall said he realised that he failed badly with controlling certain issues, but it is was due to the area the pub was in. He added that the review had been called to early and he had been victimised and not helped. Mr Farhall said in respect of the 6 additional conditions that were being proposed that he agreed with all except the second as it was not possible. The other conditions asked for by Hastings Borough Council were agreed or already in place.

Councillor Webb asked Mr Farhall how many patrons he had banned during the last 3 months. Mr Farhall said 8 people had been banned. He said he was now taking an active roll at the front of the pub, with zero tolerance on

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~~swearing and that he pulled out of bar watch because of the cost and he did not believe the scheme worked.~~

~~Councillor Charlesworth sought clarification on Mr Farhall's position in the premises. Mr Farhall explained that he was very rarely behind the bar, because he was either in the kitchen or in his office and had to deal with his children, therefore he was not fully aware of the noise. Councillor Charlesworth asked if he patrolled the premises to see what is going on. Mr Farhall said he didn't make himself known, but had banned two people. He added that issues regarding drugs were cleared out within the first three months and they had a good CCTV system installed.~~

~~Councillor Finch asked Mr Farhall if he had a list of people who were banned from the pub so the staff would know who was banned. In response Mr Farhall said that only one member of staff was ever left on premises and that half of those banned were two families. He also confirmed that he did not have door staff, as he felt there was no need. He said that he and his son staffed the outside area. On a Saturday night with approximately 30 to 40 people in pub they would extend to four members of staff.~~

~~Councillor Finch asked what the effects would be if Mr Farhall reduced his hours. Mr Farhall said he took on the pub to sell alcohol and occasional food, now he would have to increase the number of customers during the day and sell more food or the pub would close.~~

~~Councillor Webb questioned Mr Farhall on the involvement of the Designated Premises Supervisor. Mr Farhall said the DPS was in the bar 90% of the time. He could not afford additional staff, and up till recently only he and his wife were in the bar.~~

~~In his summary, Mr Spink said the premises had been causing a public nuisance and would continue to do so, therefore it was necessary and appropriate to impose conditions on the premises. He maintained his concern regarding Mr Farhall's denial of the problems, but believed that Mr Farhall accepted some responsibility at this hearing. He added that a Temporary Event Notice could be applied for individual events.~~

~~RESOLVED (unanimously) that, the premises licence be amended by removing live music entirely and limiting recorded music, including karaoke to 11:00hrs – 23:00hrs Monday to Saturday and 12:00hrs – 22:00hrs Sunday with supply of alcohol being limited to the same hours and opening hours of the premises being 11:00hrs – 23:30hrs Monday to Saturday and 12:00 – 22:30hrs Sunday. The Licence is also subject to the following conditions:~~

- ~~1. The volume level of recorded music and karaoke played on the premises shall be controlled so that it is not audible beyond the boundary of any residential premises as perceived by an authorised officer of Hastings Borough Council.~~**

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- ~~2. Use of the smoking shelter shall not be permitted after 22:00hrs each day.~~
- ~~3. Patrons shall not be permitted to take any drinks outside after 22:00hrs each day.~~
- ~~4. Clear and prominent notices shall be displayed at exit doors, in the smoking shelter and at external seating areas requesting customers "Please show consideration for our neighbours and keep noise levels down when outside and leave the area quickly and quietly when going home".~~
- ~~5. External seating shall be provided to the front of the building only, shall not extend beyond the building frontage and be not less than 10 metres from the boundary with residential premises.~~
- ~~6. The external seating area and smoking shelter shall be monitored and managed to ensure that customers do not cause nuisance to neighbouring residents.~~

~~Reason – The Committee have listened very carefully to the evidence before it. It is clear that the licensing objective of the Prevention of Public Nuisance has been undermined, and created unreasonable disturbance.~~

~~The Committee have had regard to the guidance issued by the Secretary of State and its own Policy.~~

**5. APPLICATION TO VARY PREMISES LICENCE: SPICE ROCK, 43
WHITE ROCK, HASTINGS**

Councillor ***** set out the procedure that the Sub-Committee would adopt (in accordance with Standard Practice), all parties confirmed they understood this.

The Corporate Director, Environmental Health, submitted a report on an application to vary premises licence at Spice Rock, 43 White Rock, Hastings.

Mr Brown, Licensing Manager, presented the report to the committee as a result of representations received. The report referred to an application which sought consent to vary the premises licence. Mr Brown referred to an error on page 8, paragraph 10 of the report which he amended to include the words "to Saturday". For completeness, paragraph 10 was amended to read: "To add the facility for late night refreshment Sunday to Wednesday 23.00hrs to 00.00hrs and Thursday to Saturday 23.00hrs to 02.30hrs."

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Mr Stemp, Counsel for Sussex Police Authority, made his representation under the Prevention of Crime and Disorder and the Prevention of Public Nuisance. He advised the Committee that further to the written representation submitted by the Police on 12th September 2013, an incident occurred on 5th October 2013 at the London Trader P.H. which required Police intervention. A précis of the incident was circulated for the Committee to read.

Sergeant Vokins from Sussex Police Licensing Team referred to the written representation submitted by the Police on 12th September. He felt the application was insufficient in that the conditions were lacking clarity and were therefore unenforceable. He addressed the key issues listed in the Police's representation and explained why they were too vague. He raised concern regarding the management of the incident which occurred on 5th October in that none of the staff who were present during the incident were Security Industry Registered (SIA) and that he would expect the application to be more robust if the applicant was wishing to extend hours of the premises.

Mr Foot, applicant and premise licence holder asked Sergeant Vokins how many cases of crime and disorder had been attributed to the premises since August 2011. Mr Stemp stated the committee were considering events from October 2012 onwards and that prior events to that date were relevant to the previous review and not to this application.

Mr Casey, Principal Environmental Health Officer (Pollution), made his representation on the grounds of the prevention of public nuisance and referred to his written submission. He stated there had been an improvement in the premises since the review due to the times and conditions imposed. He believed the impact would be adverse to local residents if the current application to extend the hours were to be granted. He said The London Trader would be a magnet for public nuisance issues if it were to close at 03.00hrs, which is significantly beyond the 01.00hrs closing time for other premises.

Mr Edwards, representing Hastings Old Town Residents Association (HOTRA) in his submission said prior to the last review of the premises there had been a serious case of disorder at the rear of the London Trader, an incident which involved 30 to 40 men brawling. The police attended, but the incident was not reported at the last review. He went on to say the premises were like an island whereby patrons go round the back and to the sides of the building. It attracts excitable clientele he said. His concern was that if the application was granted for extra hours, the premises would revert back to how it was before the review. Furthermore, if the hours of music were extended, it would be detrimental to so many lives. He said the efforts made so far had brought about significant gains.

Mr Brown read to the Committee the three additional representations that had been received from local residents which were appended to the agenda on pages 45, 46 & 47. Two of the representations received were from residents who sought anonymity for fear of reprisals. Both residents accepted that doing so would possibly dilute the weight of their comments.

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In his submission, Mr Foot, said he had been at the London Trader since 2005. He accepted that poor management had contributed to the problems at the London Trader. Furthermore, on 15th August 2011 when the licence was under review, he removed the manager and changed the sound system. This resulted in reduction of noise from the London Trader. He stated that up until 10th April 2012 the premises had operated on its existing licence until 1pm and during that period there were no incidents reported of crime and disorder or noise complaints. He stressed that the improvements were not purely because of the reduction in hours put on the premises since the appeal hearing at Hastings Magistrates Court on 10th April 2012, other measures had helped such as security barriers, keeping the windows shut and the new sound system.

Mr Edwards asked Mr Foot if he felt the application sought too much too soon and went on to say the community wants measures that are lasting and effective and do not want the premises to revert back to the level it was before the last review. He urged the committee to reject the application.

The meeting adjourned at 11.45am for a 10 minute break.

Mr Brown clarified the position regarding the highways permit area which had formally been agreed with ESCC. Since writing the report, the plan had been updated following a meeting with relevant parties to move the security barriers because it blocked the entrance to No. 3 East Beach Street. The amended plan had not been received.

RESOLVED (unanimously) that the application be REFUSED.

The Committee has listened very carefully to all the evidence submitted this morning and must be mindful of the four Licensing Objectives.

The Committee consider the application as lacking in specificity and enforceability and any steps proposed as addressing the Licensing Objectives are either existing, mandatory or too vague to be enforceable.

The premises has been operating more successfully, although not without problems, under the existing Licence (as varied in October 2012) and the Committee do not have confidence that were the hours to be further extended, that the Licensing Objectives of Prevention of Crime and Disorder and Prevention of Public Nuisance would be upheld.

The Committee have had regard to the guidance issued by the Secretary of State in June 2013 and its Licensing Policy.

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(The Chair declared the meeting closed at *****pm)