

MINUTES OF LICENSING ACT 2003 SUB-COMMITTEE

MEETING DATE Monday, 23 March 2015

MEMBERS PRESENT: Councillor Marion Lowe (Chair), and Councillors Mike Handley and John Walker

OFFICERS: Alex Jackson (Legal Services Team Leader), Stephen Culleton (Licensing Officer), Neil Kirkham (Environmental Health Officer), Elizabeth Walsh (Solicitor) and Dianne Scambler (Democratic and Member Services Officer)

APOLOGIES: None

OTHER MEMBERS: Sergeant A Bushell (Lancashire Constabulary) and Sergeant P Elsdon (Lancashire Constabulary (Southern Division)) Mr G Gundogdu (Applicant) Mrs Gundogdu, Samantha Faud (Naphthens LLP, Solicitors) and 26 members of the public

15.LAS.45 Declarations of Any Interests

There were no declarations of any interests.

15.LAS.46 Procedure

The Chair ensured that everyone present had sight of the procedure.

15.LAS.47 Application to vary a licence under Section 34 of the Licensing Act 2003, for the Sirloin Inn, Station Road, Hoghton

The Council received an application from Black Napkins Northwest Limited made under Section 34 of the Licensing Act 2003 for the Variation of the Premises Licence for the Sirloin Inn, Hoghton. Members were asked to determine the application in light of representations received from responsible authorities and other persons. The application had received 24 representations from other persons, Lancashire Constabulary and the Council's Environmental Health Regulatory Officer.

The premises currently benefits from a premises licence PLA 0307 and the application sought to increase the licensable hours, the scope of regulated entertainment provision and to include licensable activities to both inside and outside the premises, to simultaneously remove conditions attached to the existing premises licence operating schedule and to propose new conditions to the operating schedule of the premises licence to promote the Licensing objectives.

The applicant(s) attended the Sub Committee along with their legal representative.

The Sub Committee carefully considered the applicants written and verbal representations and also took into account all the representations, both written and verbal that were made by a number of local residents who were present at the meeting, Lancashire Constabulary and the Council's Environmental Health Regulatory Officer who were all objecting to the proposals. The representation was chiefly concerned with the licensing objectives of the prevention of public nuisance and crime and disorder.

The Sub Committee have also taken into account Section 4 of the Licensing Act 2003, its Statement of Licensing Policy and the amended guidance issued by the Secretary of State under section 182 of the Act, in particular those paragraphs referred to in the Lead Licensing and Enforcement Officer's report, the licensing objectives and the Human Rights Act implications including Article 6, Article 8 and Article 1 of the First Protocol.

The Sub Committee **RESOLVED** to grant the application to vary the premises licence subject to the conditions proposed by the applicant, those conditions proposed by the police which the applicant has accepted and subject to the following amended condition and additional condition:

- (a) **The requirement for use of a sound measuring device in the applicant's proposed condition at Agenda Page 31 when there are events on the car park shall be deleted as the Environmental Health Officer advised that measurements from such a device were of little use for enforcement purposes. However the same condition requiring instead audible assessments shall remain.**
- (b) **Members give delegated authority to the Lead Licensing and Enforcement Officer to draft a suitable condition in consultation with Chair or Vice-Chair of this sub-committee to require a suitable number of waste receptacles within the boundary of the licensed premises; the size and arrangements for the securing of which are acceptable to the Licensing Authority . This condition is to address the potential for litter nuisance referred to by residents at the hearing.**

Live Music	Indoors: 11.00 – 00.00 Outdoors: 11.00 – 22.30
Recorded Music	Indoors: 11.00 – 00.00 Outdoors: 11.00 – 22.30
Late Night Refreshments	Indoors: Sunday to Thursday: 23.00 – 00.30 Friday and Saturday: 23.00 – 02.00 No outdoor Late Night Refreshments
Sale of Alcohol (on and off)	Sunday to Thursday: 11.00 – 00.30 Friday and Saturday: 11.00 – 02.00

	Alcohol sales will cease in the outside area at 22.30 with no consumption after 23.00
Opening Hours	Sunday to Thursday: 11.00 – 01.00 Friday and Saturday: 11.00 – 02.30
Plays	Indoors: 11.00 – 23.30 Outdoors: 11.00 – 22.30
Films	Indoors: 11.00 – 23.30 Outdoors: 11.00 – 22.30
Boxing or wrestling	Indoors: 11.00 – 23.30 Outdoors: 11.00 – 22.30
Performances of Dance	Indoors: 11.00 – 23.30 Outdoors: 11.00 – 22.30
Anything of a similar description as above	Indoors: 11.00 – 23.30 Outdoors: 11.00 – 22.30

Current Conditions:

The Designated Premises Supervisor is a fully qualified first aider.

Pre-opening safety checks are carried out daily.

There are notices inside the premises requesting that customers leave in an orderly manner.

Local taxi firms will be informed of any changes to opening hours.

Recorded music may be played from 00.00 until close provided that it is played at a reduced level, as to not disturb neighbours i.e. music is inaudible to the nearest noise sensitive location.

Children must be accompanied at all times.

There shall be placed at all exits from the premises and in the car park, in a place where they can be seen and easily read by the public, notices requiring customers to leave the premises and the area quietly, (Note this may also include a reference to vehicles.)

Conditions offered on the application:

Staff including door staff will be trained and have knowledge of fire precaution measures, illegal sales of alcohol, first aid and drug policy.

All staff training will be recorded and these records made available for inspection on request by a responsible authority.

The premises licence holder will implement a daybook to be maintained and managed to the satisfaction of Lancashire Constabulary and the local authority.

Any persons employed on the premises who are under the age of 18 shall be employed in accordance of the statutory regulations relating to employment of young persons.

Conditions agreed with the Police (some of which were offered by the applicant or are current conditions but to avoid duplication have proposed to agree to the below)

The premises shall operate and maintain a CCTV system which shall be in use during all times licensable activities are taking place at the premises and comply as follows:

- 1. The system shall cover all entrances and exits from the premises, in addition to covering all internal areas open to the public and the external decking area.**
- 2. CCTV recordings shall be evidential quality.**
- 3. The system will be capable of time and date stamping recordings and retaining said recordings for at least 21 days.**
- 4. The data controller shall make footage available to a police officer or authorised officer, where such a request is made in accordance with the Data Protection Act 1998.**
- 5. There shall be a member of staff on duty at all times the premises is open to the public, who is trained in the operation of the CCTV system and capable of providing a copy of any recording to any responsible authority on reasonable request.**

The premises will have a written drugs policy to the satisfaction of the police that will include a search policy and all staff will have a working knowledge if it.

All staff will receive ongoing training in drugs awareness; this training will be recorded and retained on the premises. These records will be made available for inspection by a responsible authority on reasonable request.

Staff will make regular checks of internal and external areas to ensure that any unused glasses and bottles are collected.

The licence holder or his representative shall conduct regular assessments of the noise (every hour) during the provision of any regulated entertainment at the premises and shall take steps to reduce the level of noise where it is likely to cause a nuisance to the residents.

A written record will be made of these assessments which shall include the time and date of the checks, the persons making them and the results of any action taken.

The Designated Premises Supervisor will ensure the premises maintains an incident book which will contain a record of all incidents relating to the premises, its staff and customers, including time date, nature of incident and outcome to the satisfaction of Lancashire Constabulary and the local authority. This record will be available on request to any responsible authority.

The premises will operate a policy that prevents the sale of alcohol to persons under 18 to the satisfaction of the police and local authority. This policy shall state that any person who does not appear to be at least 25 years of age, will not be served unless they can produce a recognised proof of age card accredited under the proof of age standards scheme (PASS), photo card driving licence passport.

Any challenges made by staff relating to this policy will be recorded in the incident book situated at the premises.

Notices will be displayed where they can be clearly seen and read in the premises indicating that the premises operates a challenge policy in relation to the sale of alcohol.

All staff will be trained in relation to the sale of alcohol to persons under 18. This training will be recorded and made available for inspection by any responsible authority on reasonable request.

Conditions proposed as a result of mediation:

When regulated entertainment is taking place after 22.00 all windows and doors will be kept closed except for access and egress and in the event of an emergency.

The car park will only be used for licensable activities for up to 12 events per year.

When there are events on the car park, the licence holder or his representative shall conduct noise assessments every hour during the provision of any regulated entertainment. The noise assessments will be taken at two points, one at the nearest noise sensitive premises and the second on the opposite side of the car park. Action will be taken to reduce the noise levels if the results are unreasonable.

The results of the noise assessments will be recorded as well as the date, time, name of person taking the assessment and details of any action taken. The sound records will be kept on the premises and produced to an authorised officer if requested.

When events are held on the car park, the two SIA door supervisors will be employed throughout the event. Between 22.30 and 23.00 the door supervisors will encourage customers to disperse from the car park. At 23.00 the door supervisors will ensure the car park is clear of customers.

Prior to events being held on the car park, the Designated Premises Supervisor or their representative will provide local residents with information relating to the event including details regarding car parking and a contact mobile number they can call during the event.

Members of staff will monitor the terrace area to the rear of the premises on a regular basis to ensure customers are not consuming alcohol there after 23.00.

The decision was made for the following reasons:

- 1) The changes introduced by the Live Music Act 2012 mean that performances of unamplified live music or amplified live music before an audience of up to 200 people up to 11:00 pm are no longer licensable in a licensed premises or a workplace. The car park even if not included within the licensed area is a workplace for the purposes of the Live Music Act 2012 so at least some of the activities proposed as regards live music could still take place until 11:00 pm (subject to the above audience limits when applicable) even without this application being granted. Members consider that the grant of the application subject to additional conditions is consistent with the licensing objectives but note that a benefit resulting from the grant of the application is to bring the activities within the licensing regime so that the activities can be properly controlled and subject to the enforceable conditions currently on the licence.
- 2) The Environmental Health Officer could not say at the hearing that complaints of statutory nuisance or even at the lower threshold of common law nuisance applicable in the Licensing Act 2003 had been substantiated despite complaints having been made in 2014 and subject to further investigation by Environmental Health officers, including provision of log sheets and recording equipment to complainants.
- 3) Members did not reach a determination on the dispute over whether live music had taken place on 7 March 2015 which is the subject matter of the two witness statements advanced by the applicant. Members considered that their task was more to decide whether over a period of time there was emitted from the premises a pattern of noise amounting to at least common law nuisance rather than focusing on one particular disputed incident. Overall members were not satisfied that there was noise nuisance given that the Council's Environmental Health Officer could not say it existed even when residents had been involved in the assessment.
- 4) The Police had stated at the hearing that granting of the application could possibly cause crime and disorder but did not support this with examples or incident logs with their written representation or at the hearing. The use of the word "possibly" and the lack of documented incidents meant that members could not reasonably decide that there was a likelihood of crime and disorder if the application were granted.
- 5) The police written representation states that crime and disorder could increase if patrons are allowed consume alcohol later. However the police object most of all to the increased times for outdoor activity as is evident from Agenda page 62 and Agenda page 33 of the additional information supplied by the applicant. Members are puzzled why the police did not object to the extra activities not currently permitted being added indoors as well since according to this reasoning crime and disorder would also increase when patrons leave the premises. This appeared to be an inconsistency in the police response.
- 6) Neither the Police nor Environmental Health objected to the licensable activities not currently on the licence (plays, films, boxing/wrestling, performance of dance etc.) being added. There was little specific opposition by local resident to these extra activities who instead concentrated more on the potential negative

effects of later hours and music based events. Overall there was nothing before members to justify not granting the application for these additional activities.

- 7) The conditions proposed by the applicant and those proposed by the police which have been accepted by the applicant are appropriate to promote the licensing objectives of prevention of public nuisance and the prevention of crime and disorder.
- 8) Members heard of incidents of litter in residents' gardens and also that it was disputed by the applicant that at least some of this originated from the premises. Members decided that given the presence of customers at events that there was a reasonable risk of litter and that that it was appropriate to require the premises to have sufficient waste receptacles for disposal of litter on the premises. This was imposed to promote the licensing objective of the prevention of public nuisance.
- 9) Members noted reference by the police and local residents to the Council's Statement of Licensing Policy regarding parking. However members gave more weight to paragraph 13.56 of the Home Office Section 182 Guidance which emphasises the separation of statutory regimes. Members consider that highway issues need to be addressed by Lancashire County Council as the Highways Authority for the area rather than attempting to rely on the Licensing Act 2003. Members welcome the commitment of the applicant to the voluntary measures to deal with parking issues such as placing of cones on event days.
- 10) Members consider that the issues raised by a local resident regarding the level crossing are too remote from the premises for it to be reasonable to make the premises responsible for irresponsible actions by some members of the public.
- 11) Members considered that the points raised by the local resident about the fire safety risk posed by events with up to 499 people related to temporary event notices which have a limit of 499 persons although the local resident concerned did not mention temporary event notices. Determination of an objection to a temporary event notice was not the issue before sub-committee and was therefore not relevant.

Members also noted that there was common ground between the parties over the Thwaite's case referred to by both the applicant and the police since the applicant's solicitor said she agreed with the article by Mr Colvin QC. Members directed themselves that the lesson of the case was to give clear reasons for a decision and state which matters they have taken into account.

Chair

Date