

# LICENSING ACT 2003 SUB-COMMITTEE

Wednesday, 11 April 2012

Present:

Councillors E Boulton  
W J Davies  
G Davies  
S Niblock

126 **APPOINTMENT OF CHAIR**

**Resolved -**

(1) That Councillor W J Davies be appointed Chair to consider the application regarding the Grant of a Personal Licence together with Councillors E Boulton and S Niblock.

(2) That Councillor S Niblock be appointed Chair to consider the application regarding Peggy Gadflys together with Councillors E Boulton and G Davies.

127 **MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members were asked to consider whether they had personal or prejudicial interests in connection with any items on the agenda, and, if so, to declare them and state what they were.

Councillor G Davies declared a personal interest in item 6, Peggy Gadflys, (minute 130 refers) by virtue of the tenant previously being a Member of the Council.

128 **EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC**

**Resolved -** That, under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined by paragraph 1 of Part I of Schedule 12A (as amended) to that Act. The Public Interest test had been applied and favoured exclusion.

129 **APPLICATION FOR THE GRANT OF A PERSONAL LICENCE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 (DC)**

The Director of Law, HR and Asset Management reported upon an application received from DC for a Personal Licence under the provisions of the Licensing Act 2003.

The report was exempt because it contained sensitive and personal information regarding the individual concerned.

It was reported that under the provisions of the Licensing Act 2003 the Licensing Authority must seek guidance from the Police if the applicant is convicted of a relevant offence. An Objection Notice had been received in respect of the application on the grounds that the applicant had been convicted of a relevant offence. A copy of the Notice of Objection was available.

The applicant was invited to attend the hearing, however he failed to attend.

Mr D K Abraham, Legal Advisor to the Sub-Committee, referred to Regulation 20 of the Licensing Act 2003 Hearings Regulations 2005 which outlined the consideration of an application in the absence of the applicant.

Members gave careful consideration to Regulation 20 of the Hearings Regulations 2005, however, after taking into consideration the fact that the applicant had failed to attend a previous hearing, Members were satisfied that all reasonable attempts had been made to contact the applicant and decided to proceed with the application in his absence.

Sergeant P Jenkins and Constable P Coley attended the meeting. Sergeant Jenkins made representations regarding the Objection Notice submitted by Merseyside Police.

Sergeant P Jenkins and the applicant responded to questions from Members of the Sub-Committee and Mr D K Abraham, Legal Advisor to the Sub-Committee.

Members gave careful consideration to the application for a Personal Licence and the Objection Notice submitted by Merseyside Police and in doing so referred to the Statutory Guidance issued under Section 182 of the Licensing Act 2003, in particular, paragraph 4.9.

In determining the matter, Members had to consider whether there were exceptional or compelling circumstances to justify the granting of the application.

Members noted that the applicant did not attend the hearing and had also failed to attend a previous hearing. Members considered the representations made by Merseyside Police and had concerns regarding the seriousness of the offence referred to which had resulted in the applicant being convicted in 1999.

Members did not consider that any exceptional or compelling circumstances had been presented in order to justify granting the application.

**Resolved - That the application made by DC for the grant of a Personal Licence be refused under the provisions of the Licensing Act 2003.**

130 **PEGGY GADFLYS, 93 VICTORIA ROAD, NEW BRIGHTON**

The Director of Law, HR and Asset Management reported upon an application that had been received from GRS Pub Investments Limited to vary a Premises Licence in respect of Peggy Gadflys, 93 Victoria Road, New Brighton, under the provisions of the Licensing Act 2003.

The application to vary the Premises Licence was as follows:

#### Sale by Retail of Alcohol

Monday to Wednesday	11:00 to 01:00
Thursday	11:00 to 01:00 (unchanged)
Friday and Saturday	11:00 to 02:00 (unchanged)
Sunday	12:00 to 01:00 (unchanged)

#### Hours Open to the Public

Monday to Wednesday	11:00 to 01:30
Thursday	11:00 to 01:30 (unchanged)
Friday and Saturday	11:00 to 02:30 (unchanged)
Sunday	12:00 to 01:30 (unchanged)

#### Regulated Entertainment (Exhibition of Films and Recorded Music)

Monday to Wednesday	11:00 to 01:00
Thursday	11:00 to 00:00 (unchanged)
Friday and Saturday	11:00 to 01:00 (unchanged)
Sunday	12:00 to 00:00 (unchanged)

#### Regulated Entertainment (Live Music)

Monday Wednesday	11:00 to 01:00
Thursday to Saturday	11:00 to 00:00 (unchanged)
Sunday	12:00 to 00:00 (unchanged)

#### Entertainment Facilities (Facilities for Dancing)

Monday to Wednesday	11:00 to 01:00
Thursday	11:00 to 00:00 (unchanged)
Friday and Saturday	11:00 to 01:00 (unchanged)
Sunday	12:00 to 00:00 (unchanged)

#### Late Night Refreshment

Monday to Wednesday	23:00 to 01:00
Thursday	23:00 to 01:00 (unchanged)
Friday and Saturday	23:00 to 02:00 (unchanged)
Sunday	23:00 to 01:00 (unchanged)

#### Non-Standard Timings (unchanged)

All of the above Licensable Activities and Hours Open to the Public

A further additional hour into the morning following every Monday for each May bank holiday, Spring/Whitsun Bank holiday and every August Bank holiday weekend.

A further additional hour into the morning following every Monday for the Easter Bank holiday weekend.

A further additional hour every Christmas Eve and Boxing Day

From the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day

The applicant had submitted an operating schedule setting out how the business would be conducted/managed in accordance with the four licensing objectives. A copy of the full application was available. Members were advised that the proposals set out in the operating schedule may become conditions of the licence should the licence be granted.

In respect of the application, four representations had been received from local residents. The representations related to anti-social behaviour caused by customers of the premises and to nuisance currently being caused by noise from entertainment emanating from the premises.

Copies of all representations were available at the meeting.

Mr Clee, tenant of the premises, attended the meeting together with Mr Hammond, Bar Manager and his legal representative Mr Grimsey.

Mr N Joughin, Environmental Health Officer was in attendance.

Also in attendance were Mr Jones and Mrs Warren-Jones, local residents.

Councillor G Davies stated that he was acquainted with Mr Clee by virtue of him having previously been a Councillor, however he confirmed he had had no contact with him for a number of years.

All parties confirmed they were content that Councillor Davies had no prejudicial interest in the matter and were satisfied for the application to be considered.

The Licensing Manager confirmed that all documentation had been sent and received and that Mr Joughin had been requested to attend the meeting by both parties although he had not made any representations.

In response to a question from Councillor Niblock, the Licensing Manager confirmed the current conditions imposed upon the Premises Licence.

Mr Grimsey addressed the Sub-Committee and advised Members that the application was in order to bring the hours of operation of the premises for the early part of the week in line with the latter half of the week. He informed Members that Mr Clee had taken over the premises on 17 December 2011 and therefore asked Members to bear this in mind as some comments regarding noise had been made prior to this date. He advised Members that Mr Clee was intent on being a good neighbour.

Mr Clee addressed the Sub-Committee and explained how the premises operated in that live music was played most nights. He reported that he had engaged with Mr Joughin in order to tackle the problem of noise emanating from the premises and had carried out work to the premises which was still ongoing. He advised that he had a great deal of sympathy for the nearest neighbours who resided in Mason Street. He

gave details of the work that had been carried out to the premises and the measures taken to attempt to reduce noise levels. He urged local residents to contact him regarding any concerns and assured that he would welcome this and act upon any difficulties raised. He advised that the reason for the application was financial due to the premises not reaching financial targets and informed Members that should the application be granted the extra hours would make the difference.

Mr Clee and Mr Grimsey responded to questions from Members of the Sub-Committee, Mr Abraham, Legal Adviser to the Sub-Committee and Mr Jones.

Mr Joughin informed Members that he had had heavy involvement with the premises due to complaints received regarding excessive noise. He confirmed that some work had been carried out and that this was ongoing. He also advised that his comments related to music emanating from the premises and not regarding dispersal issues.

Mr Joughin responded to questions from Members of the Sub-Committee, Mr D K Abraham and Mr Grimsey.

Mr Jones welcomed Mr Clee's commitment to work with local residents. He described the proximity of his address to the premises and advised Members that he lived directly opposite. He reported upon the huge change in the way the pub had been marketed over time and expressed his concern regarding the operation of the premises as an entertainment venue as it was similar to a nightclub. He reported upon the intolerable noise levels during the last three months and advised Members that he had contacted Mr Joughin. He advised Members that the noise nuisance was not only from live music emanating from the premises but also from gangs congregating at the side and front of the pub. He reported upon anti-social behaviour and advised that he had contacted the Police a number of times to report incidents. He believed that if the hours were extended the level of anti-social behaviour would be increased. He was also concerned regarding the dispersal of customers in the early hours of the morning and believed this would result in local residents having no respite from noise nuisance. He considered that the hours applied for were unreasonable.

Mr Jones responded to questions from Members of the Sub-Committee, Mr D K Abraham and Mr Grimsey.

In determining the application the Licensing Act 2003 Sub-Committee had regard to the four Licensing Objectives, the Council's Statement of Licensing Policy, in particular, paragraph 8.1 and the Statutory Guidance issued under Section 182 of the Licensing Act 2003.

Members heard representations in support of the application from Mr Clee, the tenant of the premises as well as his legal representative, Mr Grimsey.

Members considered the written representations from residents and heard direct evidence from local residents, Mr Jones and Mrs Warren-Jones.

Whilst Members had regard to the fact that there were no representations from any of the Responsible Authorities, they noted the comments made by Mr Joughin who was currently working with both the applicant and residents regarding the issue of noise

emanating from the premises. Members had regard to the location of these premises and that it was situated in close proximity to residential properties.

Members noted that whilst Mr Clee had made a number of improvements to the fabric of the building in an attempt to prevent noise escaping and causing a nuisance and disturbance to residents, they also heard direct evidence from Mr Jones that he and his wife were currently being disturbed by customers of the premises particularly following the closure of the premises and that this would be extended to a later hour on those days applied for than was already being experienced should the application be granted.

Members also noted that although Mr Jones had been reassured by Mr Clee's willingness to work with local residents to address any concerns, he believed that adequate consideration had not been given to the nature of the change of the premises and the impact this would have on local businesses and residents.

In light of the above, Members considered that the Licensing Objective in respect of the Prevention of Public Nuisance would be undermined should the application be granted and believed there would be no conditions that could be imposed on the Premises Licence that would alleviate the problems if the extended hours were granted.

**Resolved -**

**(1) That in accordance with Regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.**

**(2) That the application to vary the Premises Licence in respect of Peggy Gadflys, 93 Victoria Road, New Brighton, be refused.**