

LICENSING ACT 2003 SUB-COMMITTEE

Wednesday, 13 November 2013

Present:

Councillors S Niblock
 T Norbury
 M Sullivan

36 **APPOINTMENT OF CHAIR**

Resolved – That Councillor S Niblock be appointed Chair for this meeting.

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

Members of the Sub-Committee were asked to declare any disclosable pecuniary and non pecuniary interests in connection with the application on the agenda and state the nature of the interest.

No such declarations were made.

38 **APPLICATION TO REVIEW A PREMISES LICENCE - THE SWINGING ARM, 61-63 CHURCH STREET, BIRKENHEAD**

The Strategic Director of Regeneration and Environment reported upon an application that had been received from Environmental Health (Pollution Control) for the review of a Premises Licence in respect of The Swinging Arm, 61-63 Church Street, Birkenhead, under the provisions of the Licensing Act 2003.

The premises currently hold a Premises Licence allowing the licensable activities as set out in the report.

The Strategic Director advised that the Sub-Committee may, having regard to the application for review and any relevant representations, take such of the following steps as it considered appropriate for the promotion of the licensing objectives:

- Modify the Conditions of the Licence.
- Exclude a licensable activity from the scope of the Licence.
- Remove the Designated Premises Supervisor.
- Suspend the Licence for a period not exceeding three months.
- Revoke the Licence.

The Licensing Authority may decide that no action would be appropriate if it found that the review did not require it to take any steps appropriate to promote the licensing objectives.

The application had been submitted by Environmental Health (Pollution Control) and the grounds for review were in relation to the prevention of public nuisance due to

noise from music and customers of the premises late at night which Environmental Health had determined was causing a statutory nuisance.

Two representations had been received from local residents who supported the application made by Environmental Health due to noise nuisance being caused by music coming from the premises and customers of the premises leaving at a late hour.

Six representations had been received from local residents who had advised that these premises were not undermining any of the licensing objectives.

Mr N Joughin and Mr T Zorn, Environmental Health Officers, attended the meeting.

Also in attendance were Mr Owen, Premises Licence Holder and his representative Mr Douglas.

A local resident also attended the meeting.

The Licensing Manager reported that all documentation had been sent and received.

Mr Joughin reported that a Statutory Noise Abatement Notice had been served on the premises following complaints from local residents regarding noise nuisance emanating from the premises. This had followed Mr Zorn having monitored noise levels at a complainant's house. Mr Zorn reported that there were ongoing problems regarding noise which amounted to a statutory nuisance and that Environmental Health could consider prosecuting the premises should they continue to breach the statutory notice.

Mr Zorn reported that further to liaising with the Premises Licence Holder, he had suggested a number of conditions which could be imposed upon the Premises Licence to prevent noise from music emanating from the premises and that the Premises Licence Holder had agreed that a number of conditions be applied to the Premises Licence. He advised Members that works had already been undertaken at the premises and that external speakers had been disconnected.

Mr Joughin and Mr Zorn responded to questions from Members of the Sub-Committee, Mr D K Abraham, Advisor to the Sub-Committee and Mr P Douglas.

The local resident reported that she was encouraged to hear that measures had been put in place regarding the prevention of noise from music emanating from the premises. She advised Members that the premises were located in close proximity to local residents' houses and that a large number of people congregated at the front of the premises late at night which caused noise nuisance. Noise nuisance was also experienced from vehicle doors slamming, taxis arriving and people shouting and arguing and also by customers of the premises sitting at tables outside the premises as well as people leaving the premises particularly on Fridays and Saturdays. She informed Members that a number of residents had not been aware of the application earlier in the year for the Premises Licence to be varied to increase the hours at the premises and that the problems had become worse since the later hours of operation of the premises with noise continuing until beyond 1am. The level of nuisance was described as 'immeasurably worse since the late licence'.

The local resident also informed Members that the premises occasionally held all day charity events which were frequented by a large number of motorcyclists. She believed the location of the premises were unsuitable for such events due to the premises being situated on a narrow road surrounded by residential properties. She requested that the hours be reduced to address the nuisance caused by people leaving the premises during the early hours of the morning, the large numbers of people congregating outside be addressed and that the large numbers of people and vehicles attending all day events be reconsidered.

The local resident responded to questions from Members of the Sub-Committee, Mr D K Abraham and Mr P Douglas.

Mr Douglas advised Members that the premises had been operating for 12 years and that a number of charity events had been held there. He reported that the premises had been extremely well run, had never had any issues with Merseyside Police and pointed out that they had not made any representations with regard to the review. He advised that he had accepted the expert opinion of the Environmental Health Officers and that a number of measures had been implemented to prevent noise emanating from the premises. He referred to the six letters that had been sent in support of the premises and advised that Mr Owen had contacted the Local Authority and offered to meet residents in order to resolve any issues. Mr Douglas reported that the necessary alterations had been carried out. He further reported that following complaints after the hours had been extended, live music was no longer played beyond 11.00 pm and he was therefore content to reduce the hours permitted for live music to be played to 11.00 pm. He also advised that the external speaker had been disconnected. He asked that Members accept the conditions proposed as he believed they would alleviate any problems or concerns.

Mr Douglas and Mr Owen responded to questions from Members of the Sub-Committee, Mr D K Abraham and the local resident.

In determining the review application Members had regard to the licensing objectives, in particular the prevention of public nuisance, the Council's Statement of Licensing Policy and relevant guidance issued under Section 182 of the Licensing Act 2003.

Members of the Licensing Act 2003 Sub-Committee accepted the evidence provided by Environmental Health that they had found it necessary to issue a Noise Abatement Notice in respect of a Statutory Nuisance arising from live and recorded music as well as patrons frequenting the front of the premises.

Members gave consideration to the written representation which included a written log of incidents providing details of 50 occasions between 5 June 2013 and 15 September 2013 when he had been disturbed either by loud music coming from the premises or by people at the premises or leaving the premises. A further statement provided by the resident advised that these type of incidents involving loud music, people shouting, taxis attending the premises and the revving of vehicle engines were ongoing.

Within the written representations, Members noted the positive comments of the six representations received from local residents, at least five of whom were customers of the premises. Members however did not consider that on balance, the comments

made outweighed the evidence provided by other residents in respect of the nuisance and disturbance they were experiencing.

In determining the matter Members gave careful consideration to the measures proposed by Environmental Health to control noise from music at the premises and the consideration of these proposals by the Premises Licence Holder. Members noted that remedial work had been undertaken by the Premises Licence Holder to address the issue of noise escaping through gaps to both door and window frames. Members considered that whilst measures could be put in place to control the escape of noise from music that due to the location of the premises which was in close proximity to residential properties, it was appropriate to reduce the licensing hours at the premises in order to prevent public nuisance which had been identified by residents since the licensing hours had been extended at the premises.

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 Premises Licence in respect of The Swinging Arm, 61-63 Church Street, Birkenhead, be modified as follows:

- **Sale by Retail of Alcohol**

Sunday to Saturday 09:00 to 23:30

Hours Open to the Public

Sunday to Saturday 09:00 to 00:00

Regulated Entertainment

Sunday to Saturday 09:00 to 23:30

Live Music

Sunday to Saturday 09:00 to 23:00

Late Night Refreshment

Sunday to Saturday 23:00 to 23:30

- **The outside area must be cleared of customers no later than 22:00.**
- **The seating in the outside area must be covered to prevent further use beyond 22.00**
- **Acoustic boards must be fitted to all windows when live and recorded music is being played**

- **All external doors must be kept closed when live and recorded music is being played, except to allow access and egress and in the case of an emergency. The internal door into the bar area and the internal door behind the bar must also be closed save for egress and ingress when live and recorded music is being played.**
- **The Licence holder or his representative must conduct regular assessments of the noise coming from the premises on every occasion the premises are used for Live Music and Recorded Music and must take steps to reduce the level of noise where it is likely to cause a disturbance to local residents. A written record must be made of those assessments in a log book kept for that purpose and must include, the time and date of the checks, the person making them and the results including any remedial action.**
- **There must be no external music played at the premises.**