

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
29 March 2012 (10.30 am - 1.00 pm)**

Present:

COUNCILLORS

Conservative Group Peter Gardner (Chairman), Robert Benham and Frederick Thompson

Present at the meeting were Messrs D Eva, S Stallion and V Eva (the applicants), P Jones, S Lazell, H Shallow, E Young, Hayley Fuller and Michael Charalambous (Objectors), and Councillor John Wood (Observer).

Also present were Paul Jones, Licensing Officer, D Hallam, Representing the London Fire Brigade, the Legal Adviser and the Clerk to the Committee.

The Chairman advised Members and the public of action to be taken in the event of emergency evacuation of the Town Hall becoming necessary.

No interest was declared at this meeting.

1 APPLICATION TO VARY A PREMISES LICENCE FOR THE VERTIGO LOUNGE, 17-19 STATION LANE, HORNCHURCH.

PREMISES

Vertigo Lounge,
17-19 Station Lane,
Hornchurch,
RM12 6JL

DETAILS OF APPLICATION

Application to vary a premises licence made under section 34 of the Licensing Act 2003 ("the Act").

APPLICANT

Thornbury Solutions Limited,
22A Station Lane,
Hornchurch,
RM12 6NT

1. Details of existing licensable activities

The premises operate a Club Premises Certificate for the following licensable activities:

Recorded Music	
Sunday to Thursday	10.00 to 23.00
Friday & Saturday	10.00 to 00.00

Supply of alcohol (on & off premises)	
Sunday to Thursday	12.00 to 23.00
Friday & Saturday	12.00 to 00.00

2. Details of requested licensable activities

Films, live music, performances of dance, anything similar to live music, recorded music or performances of dance, provision of facilities for making music, dancing or anything similar, and supply of alcohol	
Sunday to Thursday	12.00 to 23.00
Friday & Saturday	12.00 to 01.00

Recorded music	
Sunday to Thursday	10.00 to 23.00
Friday & Saturday	10.00 to 01.00

Hours premises open to the public	
Monday to Thursday	12.00 to 23.30
Friday & Saturday	12.00 to 01.30
Sunday	12.00 to 00.00

3. Non Standard Timings

The applicant has applied to vary the New Year's Eve hours for all licensable activities to the effect that licensable activities may be provided from the end of the normal trading hours on New Year's Eve to the beginning of licensable hours on New Year's Day.

4. Other Proposed changes

The application also seeks to vary the layout of the premises. Currently the premises plans indicate there is a bar on the ground floor only. A second bar has been installed on the first floor and this application seeks in part to amend the licence in accordance with the extant premises layout.

Finally the application seeks to remove and/or amend certain conditions on the current licence. The application seeks to remove 49 conditions: 45 of these conditions are from Annex 2 of the licence, while the remaining 4 conditions are from Annex 3. Annex 2 contains conditions volunteered by the applicant when the original application for the licence was made, while Annex 3 contains conditions imposed by the Licensing Sub-Committee previously.

5. Promotion of the Licensing Objectives

The applicant acted in accordance with regulations 25 and 26 of The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 relating to the advertising of the application. The required public notice was installed in the Havering Yellow Advertiser on 15 February 2012.

Apart from the provision of recorded music the application seeks to provide all other licensable activities both indoors and outdoors. The premises contain an open terraced area on the roof; the assumption is therefore that regulated entertainment seeks to be provided externally here as well as inside the premises.

6. Details of Representations

Valid representations may only address the four licensing objectives.

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

There were seven valid representations from residents from the property adjacent to the premises. A further two residents of the same residential property submitted a representation via an agent, who represented the owners of the building. All objections related to the prevention of public nuisance. The representations were concerned at the level of noise generated by the premises. This was of particular concern when a DJ was working at the club. There were also concerns that the flat roof of the premises was being used contrary to the licence.

Peter Jones, Managing Agent for the owner of the building adjacent to the premises advised the Sub-Committee that when the licence was originally granted for the premises, a large number of fairly onerous conditions were attached. He submitted that it was considered necessary to have a lot of restrictions due to the fact that the premises are adjacent to an apartment block. Mr Jones stated that the tenants in the building already suffer from nuisance, particularly noise, and the Licensing

Authority gave approval upon the basis that the conditions were in place, and the hours were limited to what they currently are.

Mr Jones went through a number of the conditions that the applicant had applied to remove, and explained how it was important that they remained, and asked that each be reviewed and individually considered before any removal or amendment was made. He also submitted that 12:00am was late enough for the premises to be open, and that any extension would only extend the disturbance to the tenants in the apartment block. He explained that a number of the tenants were in attendance, that they all work, and that they ought to be taken into consideration prior to any variation of the licence is considered.

Ms Lazell, a tenant in the apartment block, stated that the premises is extremely close to the flats, and already the noise creates significant disturbance. When the windows are open it was possible to hear even spoken conversation. The more people there the noisier it was. She stated that there was no need for any extension of hours, and that any changes would have a negative impact upon the residents.

Ms Shallow, a tenant in the apartment block, stated that she agreed with the comments of her fellow objectors. She advised that the roof at the back of the premises was being used, and this had a direct view into her flat. She had had to put a block over her window to prevent people looking in, and the smell of cigarette smoke was present in her flat. When a DJ is playing at the premises, she can clearly hear it, despite being in the flat furthest from it.

Ms Fuller, a tenant in the apartment block, stated that in the last three months, there had been an increase in disturbance and nuisance from the premises. Particularly in warmer weather when her windows were open (at the front of her flat the windows are adjacent to the bar/terrace and the back windows adjacent to the roof) it was an "assault of the senses from all angles", with noise, smoke, and people in full view; she could clearly hear music and conversation. She advised the Sub-Committee that under the current licence there was often music after licensable hours, and she was concerned that any extension would not be adhered to either and the noise nuisance would only go on later.

Mr Charalambous, a tenant in the apartment block, stated that he wants to be comfortable in his flat. When the back area was being used (and he didn't think it was allowed to be), there was a privacy issue, as anyone out there could see into the apartments. Cigarette smoke enters his bedroom, creating a health issue. He advised that when the windows were open it was too loud to hear his television, and that when a DJ was playing, he could clearly hear him, even when he's only talking. Mr Charalambous stated that the current licence was until 12am, but that he had been up at 1am and still heard the DJ and music being played, and that therefore the current licence was not being complied with.

Responsible Authorities

Chief Officer of Metropolitan Police (“the Police”): None

London Fire & Emergency Planning Authority (“LFEPA”): The Fire Brigade had raised objection to the increase in capacity to a total of 300 persons. This increase needed to be justified by a fire risk assessment. Since the application had been submitted he had been negotiating with the applicants and a reduced number of 260 had been agreed. The individual limits had been set at 100 on the ground floor, 80 on the first floor and 80 on the second floor. As these had now been accepted by the applicants the representation had been withdrawn.

Health & Safety Enforcing Authority: None.

Planning Control & Enforcement: None.

Public Health: None

Children & Families Service: None

Public Protection: A representation had been received from Marc Gasson Havering’s Noise Specialist based upon the prevention of public nuisance. Following negotiations with the applicant who has agreed not to permit any regulated entertainment on the second floor of the premises the representation was withdrawn.

The Magistrates Court: None

7. Determination of Application

Decision

Consequent upon the hearing held on 29 March 2012, the Sub-Committee’s decision regarding the application to vary the Premises Licence for the Vertigo Lounge was as set out below, for the reasons shown:

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering’s Licensing Policy.

In addition, the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998, and Articles 1 and 8 of the First Protocol of the Human Rights Act 1998.

Agreed Facts

Facts/Issues

Whether the granting of the premises licence would undermine the licensing objectives.

In response to the representations made by the local residents the applicant, Mr Eva, advised the Sub-Committee that the premises had opened last September and there had not been a single incidence of violence, or any breach of conditions. He was seeking an extension of opening hours, a variation of licensable activities and looking to tidy up the extensive list of conditions.

He was dismayed that his organisation had caused concern to its neighbours, and was not aware that they had done so. His only contact with the residents had been from Mr Jones, in December. In hindsight he should have spoken to Mr Jones before he had submitted the application.

With regard to the specific issues raised by the residents it was never his intention that the flat roof at the rear of the second floor should be used for licensable activities. This area had been used by staff for smoking breaks and tea breaks. Once he became aware of the issue staff had been informed this was not acceptable. The recent example identified by local residents was a new member of staff who obviously was not aware of the restriction. He was prepared to accept a condition limiting access to this area to essential maintenance.

In terms of hours, the applicant was looking for parity with other licensed premises in the locality. He was not aware that any complaints had been made to the council regarding the premises, and submitted that the flats are in the town centre, so a measure of nuisance was to be expected. Mr Jones, for the residents informed the Committee that a possible reason that no formal complaints had been lodged concerning the noise or breach of conditions because the residents had no faith the council would respond.

With regard to the second windows closest to the premises the applicants had offered to pay to have these blocked up to reduce the intrusion of noise. This

offer had not been taken up by the residents. He stated that the premises is a well run establishment, and he simply seeks parity with the rest of town. He is happy to discuss noise issues, but stated that the absence of complaints speaks volumes.

Mr Eva also undertook to ensure all glasses would be removed from the bar terrace by 10.00pm. This terrace would be closed one hour before closure. The flat roof would not be used.

In response to questioning by the Sub-Committee, Mr Eva stated that the removal of conditions sought was due to the fact that when the licence was first applied for, it had to defeat the Council's saturation policy, but that since then the premises had proven a success. A lot of the conditions included were covered elsewhere, and the conditions were contradictory in some instances and he sought to tidy it up. He advised that all the applied for changes had been agreed with the relevant authorities.

Having considered the written representations and oral responses, the Sub-Committee decided that having regard to the high level and strong representations made by the objectors and given the proximity of the premises to those residences, it was clear that a substantial public nuisance was being created. Therefore, the Sub-Committee felt **unable** to responsibly extend the hours of operation or the scope of licensable activities any further in the interests of the residents. Any extension would exacerbate the already existing nuisance.

The Sub-Committee gave careful consideration to the request to remove and/or amend the existing conditions. Having been assured that many of these were duplicates or covered by other legislation. The Sub-Committee **agreed** as follows:

- To retain, without change the following conditions ; 6, 7, 11, 15, 22, 28, 70, 71, 77, 78, 92, 93, 137;
- To remove the following conditions: 20, 26, 27, 30, 31, 32, 33, 34,35, 36, 42, 43, 44, 62, 66, 80, 88, 89, 99, 100, 101, 102, 103, 104, 105, 106, 107, 111,
- Condition 2 – replace with ‘Any drinks promotion will be at a minimum of £2.00.’
- Condition 13 – Replace with ‘The bar terrace will be closed 1 hour before the premises close.’
- Condition 16 – replace with ‘The last entry time for patrons will be thirty minutes prior to the end of the licensable activity.’
- Condition 50 – Replace with ‘No person is permitted to enter or exit with any drinking vessel except for off-sales where the item

must be sealed upon sale and not consumed directly in front of the premises.'

- Condition 52 – Remove and replace with 'Door staff shall use counters at appropriate and busy times and take necessary action to ensure the maximum capacity numbers are not exceeded.'
- Condition 69 – Keep as amended 'All external doors and windows shall be kept shut other than for access and egress at all times likely to give rise to noise taking place.'
- Condition 83 – Keep with the addition of a the following wording 'additionally the applicants should provide Peter Jones and Associates, 170-180 High Street, Hornchurch, the managing agents for Impatien Properties Ltd., the owner of the building at 13-15 Station Lane, a contact telephone number to which any problems experienced by the residents of that building could be reported.'
- Condition 98 – Replace with 'The external lighting to the bar terrace will be in accordance with Health and Safety requirements.'
- Conditions 115 and 116 can be removed and replaced with 'The venue shall use toughened glass and/or polycarbonate drinking vessels at all times and in all areas. Except after 22.00 the bar terrace shall be reserved for smokers and only polycarbonate drinking vessels shall be permitted on the terrace.'
- Condition 117 – Replace with 'The maximum number of persons, including staff and entertainers, allowed on the premises at any one time shall be 260. These will be split over 3 floors in accordance with LFEPA advice.'
- Condition 125 –add 'Any amendments to the policy shall be approved by the Metropolitan Police.'
- Condition 126 – Replace with 'The designated premises supervisor shall attend a relevant drugs awareness course from an accredited body or local authority.'
- Condition 138 – Amend to read 'Premises which have a policy that includes the searching of persons shall have door supervisors of both sexes on duty at all times when required.'
- Add an additional condition to Annex 3 to read 'Children under 18 shall not be permitted on the premises after 19.00 hours daily until the end of licensable activities unless specified in under the children's policy.'

The Sub-Committee stated that in arriving at this decision, it took into consideration the licensing objectives as contained in the Licensing Act 2003, the Licensing Guidelines as well as Havering Council's Licensing Policy.

Chairman

