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SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.122

Licensing Sub-Committee	10 August 2010
Applicant for Review	Surrey Police
In respect of	Niche Bar, 169 High Street, Staines TW18 4PA
Respondent	Monty Leisure Limited

SUB-COMMITTEE DECISION WITH REASONS

Suspension of Licence and modification of conditions

1. This Sub-Committee has before it an application for Review of the Premises Licence at the Niche Bar, 169 High Street, Staines. The Review is brought by Surrey Police.
2. The Respondent is Monty Leisure Limited who is the Premises Licence Holder.

ATTENDANCE

3. A number of people have attended the Sub-Committee hearing this morning to make representations. They are:
 - a. Sgt Scott, Surrey Police – Applicant for the Review;
 - b. PC Mark Pritchard, Surrey Police;
 - c. PC James Vernon, Surrey Police;
 - d. Mr Christopher Grunert, Solicitor from John Gaunt and Partners, representing the Premises Licence Holder;
 - e. Mr Darius Monty, DPS and director of Monty Leisure Limited; and
 - f. Mr Ricardo Monty

EVIDENCE

4. The Licensing Sub-Committee has considered all of the relevant evidence made available to it, and in doing so has taken into account the regulations and national guidance under the Licensing Act 2003 and Spelthorne Borough Council's Statement of Licensing Policy.

Applicant for Review

5. Sgt Jones (the previous Licensing Sergeant for Surrey Police) outlined, in his written statement, the reason why the application for review was being made. All the points raised by Sgt Jones were reiterated by the current Licensing Sergeant, Sgt Scott, at the hearing. They related a catalogue of forty one (41) incidents of drunk and disorderly behaviour where there had been a connection to Niche Bar, during an 18 month period from the 27 December 2008 to 8 June 2010. All 41 incidents are specified in the agenda papers for the hearing. The incidents included:
 - 27/12/2008 – Assault at premises, suspect received a caution for common assault.
 - 07/03/2009 – Fight over ownership of a pint, suspect charged with ABH
 - 06/02/2010 – Ricardo Monty intervened in an argument and received a punch to the face.

6. Sgt Scott stated to the Sub-Committee that the real concern of the Police was not only the amount of incidents that had taken place but the lack of co-operation of the management at the premises. Sgt Scott advised that there were occasions when CCTV evidence could not be provided. He stated that having CCTV images was very important to the Police in pursuing an outcome when incidents occur. Sgt Scott also stated that the respondent had not taken on board advice from the Licensing Authority about a drinks promotion, which had been held on the 7 May 2010.

7. Sgt Scott requested that the Licensing Sub-Committee revoke the premises licence for the following reasons:-

“Police have found breaches of licence conditions – regarding failings of the CCTV system, under 18’s being present, failure to comply with the required number of door supervisors (found to have only one member of the door staff on the 20 November 2009 by Police when required to have two door staff). It is therefore appropriate to say that the addition of extra license conditions or modification of existing licence is highly unlikely to achieve compliance and a reduction in crime and disorder, because the premises have already demonstrated a propensity to fail to comply with the existing conditions and whilst undertaking to provide an action plan to police (of measures they propose to tackle the issues of crime and disorder related to the premises) within a week of the meeting of the 9 June they failed to do so. This demonstrates that they are not committed to the prevention of crime and disorder”.

8. Sgt Scott also proposed that should the Licensing Sub-Committee decide that revocation of the premises licence is not proportionate in the circumstances, then licensable hours of the premises should be reduced so that the premises closes at 2:00 am. Sgt Scott said that such a reduction would prevent persons who have been out drinking elsewhere in Staines, from migrating to this premises to continue drinking and causing trouble. Until very recently and for a considerable period of time, this was the only premises open until past 3:00 am.

9. PCs Blanchard and Vernon both stated that they had attended incidents at the premises and in particular on the evening of the 7 May 2010. Both officers stated that the premises attracted patrons later in the evening after all other premises in the town centre had shut. As a consequence, many who entered the premises had already consumed alcohol and consuming more at these premises had led to alcohol fuelled incidents occurring. These officers stated to the Sub-Committee that an earlier terminal hour for licensable activities would prevent these problems occurring.

Premises Licence Holder

10. Mr Grunert stated to the Sub-Committee that not all of the incidents described by the Police could be attributed to these premises. Mr Grunert pointed out that the police evidence itself stated a number of the incidents were outside the premises. He alleged that some of the incidents which were stated as being inside the premises were in fact outside of the premises and may not be attributable to Niche Bar.
11. Mr Grunert also stated to the Sub-Committee that the limited notes on the incidents that the police were able to provide did not necessarily give the whole picture of what had taken place. He stated that these incidents had been dealt with appropriately by the DPS and the door staff. Particular mention was made of the incident on 17 July 2009. Mr Ricardo Monty stated that on this occasion the premises were in the process of closing for the evening, when a lady entered in a distressed state. He had ascertained that she was not from the area and did not know the whereabouts of her friends. Mr Monty then stated that he had provided her with a drink of water when the police had arrived.
12. Mr Grunert stated that the premises had not withheld CCTV footage from the police as they had suggested. He stated that on one occasion the DPS was unable to provide footage due to failure of the system, but on all of the other occasions noted by the police, the premises was unable to provide the footage purely because the CCTV did not cover the area in question, for example one of the incidents had taken place in the toilet.
13. Mr Grunert advised that his client had been co-operating with Surrey Police and did put in place the procedures that Surrey Police had requested at the meeting of 9 June. Mr Grunert said that he himself had sent an email setting these out, within the seven day timescale. He did not know why this was not received by the police and that his information technology advisor had said it had left his firm's system.
14. Mr Darius Monty stated to the Sub-Committee that he was trying to change the type of venue. He said that they were trying to get more live music in place and were moving away from the garage, drum and bass and UK funky genres of music, as he believed that these forms of music can attract problem crowds. Mr Darius Monty provided the Sub-Committee (with the police's consent) a copy of the new Niche General Policies, Door Supervisor Code of Conduct and Promoter's Code of Conduct which were being implemented. Details were also provided of how the premises were experimenting with reduced opening hours.
15. Mr Grunert stressed to the Sub-Committee that his client had the responsible position of being the current Chairman and Secretary of Pub Watch.

16. It was presented to the Sub-Committee that the incident which occurred on 7 May 2010, was not representative of the premises. A number of underage persons had gained entrance but this had occurred because the promoter for the event (who they did not usually use) was left operating the door when Mr Monty had to attend to a technical problem which had affected his till. He advised the promoter to check identification but this had not happened during the 10 minutes Mr Monty was away. It was during this 10 minute period that the police had arrived. Mr Grunert stressed that no other problems with underage persons gaining entrance had been raised and Trading Standards had not made any representations.
17. Mr Grunert stressed that since these policies had started to be introduced in the last 14 weeks, there had been no incidents. Sgt Scott confirmed that there were no recorded incidents.

FINDINGS

18. The Sub-Committee has considered the representations made by the Applicant for the review, Surrey Police and the respondent. The Sub-Committee finds as follows:
19. Until very recently and for some period of time, these premises have been the only premises open so late (or early) within Staines Town Centre. This has attracted the custom of persons who have been out earlier during the evening, have consumed alcohol and have continued to do so at these premises. The Sub-Committee are persuaded by the evidence of Surrey Police that this has caused a great number of incidents to take place. The Sub-Committee consider that there is alcohol fuelled violence occurring at the premises.
20. The Licensing objective on crime and disorder has been undermined by the CCTV system not working correctly, although the Sub-Committee note that the system has recently been upgraded.
21. There has been a breakdown in communication between the premises and Surrey Police in recent months.
22. The premises licence holder has started to implement measures to address the issues of crime and disorder but these need to be embedded into the whole operation of the premises.

CAUSES OF CONCERN

23. The Sub-Committee is advised by National Guidance paragraph 11.18, to identify the causes of concern established by the representations. Remedial action can then be directed to those causes. In this case the causes of concern may be summarised as follows:
- (a) The number of violent incidents that have occurred both in the premises and outside which are associated with patrons who have left the premises.
 - (b) A lack of co-operation with the Police when incidents have taken place at the premises
 - (c) The CCTV system was not working for a period of time

LEGAL POSITION

24. By virtue of the Licensing Act 2003 the Sub-Committee is entitled to consider on a review application whether it should:
- ⇒ Modify the conditions
 - ⇒ Exclude a licensable activity
 - ⇒ Remove the Designated Premises Supervisor
 - ⇒ Suspend the licence for up to 3 months
 - ⇒ Revoke the licence

Written Warnings

25. The Sub-Committee considered the advice set out in the national guidance at paragraph 11.16 that a Sub-Committee could consider written warnings to a premises licence holder.

“It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warning should be issued in writing to the holder of the licence. However, where responsible authorities ... have already issued warnings requiring improvement - whether orally or in writing - that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.”

26. The Sub-Committee noted that the premises had not been given any formal warnings by the Police. The Sub-Committee do not consider a warning appropriate in the review hearing.

OPTIONS

27. The Sub-Committee has considered which of the remedies available to it would be most proportionate and reasonable to meet the Licensing Objective on prevention of crime and disorder and address the concerns outlined above.

Modification of conditions

28. The Sub-Committee considered if the problems at this premises could be remedied by the imposition of conditions. It concludes that this is both necessary and proportionate.
29. Although the Sub-Committee acknowledge that the respondent has upgraded the CCTV system at the premises, it feels that the premises licence holder should be made to ensure the responsible authorities have all necessary access to the system to resolve incidents and to ensure that proper coverage is provided. The Sub-Committee do not consider the current two conditions attached to the premises licence make the responsibilities of the premises clear, therefore it is necessary for the current conditions to be removed and replaced with the following condition:

The CCTV system installed at the premises must cover the entire interior area licensed for the provision of licensable activities. The recordings must be retained for a minimum period of 21 days and there will be a member of management on the premises at all times fully trained and competent in the operation of the system and able to produce a copy (immediately on demand) of footage to Police, Licensing Authority, Fire and Rescue Officers or officers of any other statutory body making a lawful request for a copy. A paper copy of staff training records confirming such training will be kept on the premises and produced to officers of responsible authorities upon demand. Suitable cameras to be installed considering the lighting levels within the premises to the agreement of Surrey Police. The system must be tested in accordance with the Surrey Police requirements. Any failures or breakages of CCTV equipment is to be reported as soon as practicable to Surrey Police and the Licensing Authority (and in any event this is to be done within 24 hours of the failure/ breakage) and steps are to be taken as soon as practicable to ensure that repairs are carried out the equipment returned to full function

30. The Sub-Committee also has concerns that the current conditions concerning door supervisors are not clear and believe that it is both necessary and proportionate to bring the condition in line with the current general policies of the premises as submitted at the hearing. The Sub-Committee believes that an increased number of door supervisors will help to resolve a number of incidents

which have occurred, as there will be both a visual presence and persons on the premises working solely in a security role (hence they cannot be distracted by other duties), who are trained to notice problems arising. The current conditions shall be removed and replaced by:

Two SIA registered door supervisors must be working at the premises after 9:00 pm. If there are more than 20 customers in the licensed premises, one of the door supervisors must be circulating within the premises. If there are more than 80 customers in the premises a third SIA registered door supervisor is required to work. All SIA registered door staff must be solely working in a security capacity and not as bar or other staff

31. The Sub-Committee concludes that to ensure the premises are aware of the nature of incidents taking place and to ensure full co-operation with Surrey Police that a condition should be added to the licence requiring the premises to keep an incident book. The condition to read as follows:

The premises are to have incident book to record details of all incidents that take place inside the premises. This book is to consist of a bound book with consecutively numbered pages and is to be held at the premises and available for inspection on demand by all the responsible authorities

32. The Sub-Committee also consider that it is appropriate to include a condition on a Challenge 25 policy, as there has been an incident when a number of those under 18 years have not only gained entrance into the premises (in breach of a licensing condition) but have been found consuming alcohol . The respondent stated that he is putting this in place. The condition is merely to state that a Challenge 25 policy is to be put into, and continue in, place.

Reduction in Hours

33. The Sub-Committee is persuaded by the evidence of Surrey Police that a great number of the incidents are occurring due to the licensable hours that these premises are operating. Page 20 of Surrey Police's submission for review indicates that the number of incidents increases with an ever later hour, with the peak being between 3:00 am and 4:00 am. The Sub-Committee is also persuaded by the evidence of PCs Blanchard and Vernon who work in the town centre, that a reduction in hours will help these premises promote the licensing objective on crime and disorder.
34. The respondent stated that they were experimenting with reduced hours and that during the last 14 weeks there had been no incidents. The Sub-Committee took this on board and considers that it is proportionate to all the incidents that have occurred to reduce the licensable hours of the premises. The Sub-Committee

considers it necessary to stop these premises from being a magnet to those persons who have been drinking in the town centre earlier in the evening, migrating to these premises for further drinking. As these people who have already been drinking are drinking further and causing alcohol infused violence.

Exclusion of Licensable activity

35. The Sub-Committee then went on to consider the removal of a licensable activity. The Sub-Committee does attribute the problems at these premises to the licensable activity of supply of alcohol, however to remove this licensable activity would be tantamount to revoking the licence; it does not consider this action to be necessary or proportionate in the circumstances.

Removal of DPS

36. The Sub-Committee do not consider the removal of the DPS to be either necessary or proportionate in the circumstances. The DPS has demonstrated to the Sub-Committee that he is trying to resolve the issues at the premises and he has also demonstrated his responsible attitude to the licensing trade, being the Chair and Secretary of Pub Watch

Temporary Suspension of License

37. The Sub-Committee deliberated long and hard as to whether a suspension of the premises licence was necessary or proportionate. It concluded that it was. Although the DPS had started to put in measures to address the problems at the premises (the Sub-Committee was pleased to note that there were no recorded incidents in the last 14 weeks), the new procedures and plans had not been embedded into the premises.
38. The Sub-Committee concluded that it was proportionate to suspend the premises licence for a period of 2 weeks. The purpose of this suspension is to allow the respondent to ensure that the CCTV system installed meets the requirements of the new condition and to ensure that the new policies that the respondent stated will be in place are embedded. In making this decision the Sub-Committee considered National Guidance and in particular paragraph 11.21, that it must balance any detrimental financial effect on the respondent against the need to promote the licensing objective on crime and disorder. It concluded, bearing in mind this balance, that it was a proportionate action to take but limited such suspension to the minimum period it felt was necessary to ensure these actions were taken.

Revocation of License

39. On the evidence presented, the Sub-Committee considered whether revocation of the premises licence was necessary and concluded that it was not as the DPS had taken steps to resolve the problems and the Sub-Committee concluded that the reduction in hours was more appropriate as this had already shown a reduction in incidents.

DECISION

40. The Sub-Committee has reached a decision about this matter and in doing so has taken into account the National Guidance on Reviews, paragraph 11.18, which encourages Sub-Committees to identify the problems at licensed premises and then to take a proportionate view to the remedies which are available and might be necessary to promote the licensing objectives.
41. The Sub-Committee has decided to:
- a. modify the conditions of the licence as set out above;
 - b. reduce the licensable hours to 11:00 am to 2:00 am (the following morning) seven days per week. The closing hours of the premises to be thirty minutes thereafter (2:30 am); and
 - c. to suspend the licence for a period of 2 weeks.

Cllr. R.W. Sider (Chairman)

Cllr. K. E. Flurry

Cllr. Mrs. P. C. Amos

Date of Decision: 10 August 2010

Date of Issue: 16 August 2010

RIGHT TO APPEAL

You have a right to appeal against this decision, which must be made to the Justices Chief Executive at the Magistrates court for the area in which the licensing authority is situated and within 21 days of receipt of this decision notice.