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Date: 29 October 2010

SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.23

Date of Licensing Sub-Committee: 25 October 2010
Applicant: Sung Chul Lim
Premises: 13-15 High Street
Market Square
Staines
TW18 4QY

REASON(S) FOR HEARING: Relevant representations received from residents concerning the prevention of public nuisance, the prevention of crime and disorder, and public safety

DECISION

To refuse the application

REASONS FOR DECISION

1. The application is for a premises licence for 13-15 High Street, Market Square, Staines, TW18 4QY.
2. The applicant for the Licence, Sung Chul Lim, attended the hearing and was represented by his Solicitor Christopher Grunert of John Gaunt and Partners.

Attendance

3. A number of people attended the Sub-Committee hearing to make representations. They were:
 - Mr Sung Chul Lim, Premises License Holder and his interpreter;
 - Mr Park, DPS;
 - Mr Christopher Grunert, Solicitor – John Gaunt and Partners;
 - Mr J De Pear, Interested Party;
 - Mr G. East, Interested Party; and
 - Mr R. McDougall, Interested Party

Evidence

4. The Licensing Sub-Committee considered all of the relevant evidence made available to it at the hearing 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.

Responsible Authorities

5. No Responsible Authority made representation.

Interested Parties

6. The Sub-Committee received written representations from 12 residents expressing concerns regarding the licensing objectives of prevention of crime and disorder and prevention of public nuisance. In summary the relevant concerns are as follows:
 - Fears of an extension of rowdy and anti-social behavior
 - Disturbance from loud music and people entering and leaving the premises in the early hours
 - That Surrey Police will not cope with the potential extra burden on resources
 - Increase in litter in the vicinity

Application

7. The application is to vary the premises licence at Forest and Ocean, 13-15 High Street, Staines to extend the hours of current licensable activities until 01.30 Monday to Wednesday, 02.00 Thursday, 04.00 Friday and Saturday, and 02.00 Sunday.
8. The application also seeks the addition of regulated entertainment permitting the provision of facilities for making music and dancing.

EVIDENCE

Background

9. The premises are situated in the heart of Staines Town; the premises have in the past been used as a public house, then it was converted into a late night bar with dancing taking place. In February 2010 the current Premises Licence Holder took over the premises and it was re-branded as a karaoke bar and restaurant.

Applicant

10. Mr Grunert addressed the Sub-Committee on behalf of his client and stated that Forest and Ocean (F&O) was a multi-functional premises. The front section of the building was being used as a restaurant. He stated that orders for food usually cease about 10:30pm. The middle section of the building was being used as a bar and the rear was used as a karaoke bar. The karaoke bar has a separate reception and there is a general area for singing, but also three private 'rooms' which can be hired out for groups for karaoke.
11. Mr Grunert stressed that the premises were offering a unique opportunity to customers in the area, as these were 'high tech' karaoke facilities unlike the travelling facilities you often see in pubs. He stated that the premises have been very popular and that is why they had requested an extension to the licence.
12. Mr Grunert stated that the premises are currently operating until 02:00 without any problems and therefore submitted that the variation should be granted with the current conditions on the licence and the condition agreed with Surrey Police about assessing the number of door supervisors on duty during an evening. During the course of the hearing, Mr Grunert stated that his client was willing to install an acoustic lobby at the premises and to have a 'no new entry' policy after 02:30.

13. Mr Grunert also stated that his client was in the process of drafting a smoking policy so that the numbers allowed outside were limited and that a designated area for smoking was specified.

Interested Parties

14. Three of the interested parties spoke on behalf of all the local residents who had made representation.
15. Mr. De Pear addressed the licensing objective on public nuisance in his submission to the sub-committee. He said that he had witnessed crowds of people outside the premises making noise. On the 23 October 2010 he had stood outside the premises and had seen between 20-30 people outside. Mr. De Pear went on to say that at 01:30 on the morning of the 24 October 2010 there had been about 50 people outside the premises with a lot of noise coming out of the open doors.
16. Mr. De Pear stated to the Sub-Committee that he is experiencing disturbance due to noise, from persons 'milling around' in the market square area in the early hours of the morning and from the premises because of the continual opening and closing of the doors. In his opinion the people outside were enjoying the music being played inside. Mr. De Pear said that this premises had now become the focal point for the town centre, being the latest premises open. He said that people were coming to these premises later in the evening having been to other premises in the town centre.
17. Mr. De Pear also addressed the Sub-Committee to state that due to the smoking ban people were coming out of the premises to smoke in the Market Square area.
18. Mr. East in his submission to the Sub-Committee said that there is only 55 yards separating Colnebridge Close from the premises. He said that he had noticed a difference between the current use of the premises from when it was the Boundary. He had seen a number of leaflets promoting the premises including promotions such as second drink free; first drink £1 before midnight and a Tequila night. Mr. East also commented that there is a resident DJ at the premises.
19. Mr. East informed the Sub-Committee that the doors are continually opening and closing, allowing noise from within the premises to escape. As some of the bedrooms of residents in Colnebridge Close faced onto Market Square, residents were unable to sleep with their windows open due to the noise from people entering and leaving the premises early in the morning. He gave examples of some of the problems residents had experienced including:

groups loitering in the Market Square; incidents of people urinating in the entrance to the close; and vomit in the Market Square and along the tow path. He stated that he felt people were migrating to the Market Square from other premises, as this premises has the latest opening hour. If the premises was permitted to open until 04:30 there would be unacceptable disturbance at a time when people want to be asleep. He also stated that if there was an increase in opening hours during the week it would mean that there would be disturbance at times when currently residents had some respite from late night disturbance.

20. Mr R. McDougall summarised the points made by the interested parties as follows:
- That these premises would in effect turn into a very late night, night club with extended hours on every day of the week and that this is totally unacceptable.
 - The residents accept that it is difficult for businesses in this economic climate but that their attempts to improve their situation should not be to the detriment of residents' quality of life. The residents accept the current level of disturbance but do not want to be disturbed until even later in the night (morning) on every day of the week.
 - There were concerns that this would set a precedent for other premises in the area.

Findings

21. The Sub-Committee has considered the representations made by the applicant and the interested parties and finds as follows: -
22. These premises are a karaoke bar and a bar where people are migrating to after the other premises in the town centre have stopped serving alcohol. The people arriving at the premises are in high spirits and are making noise when entering and leaving the premises. Some of the people leaving the premises are causing anti-social behavior and a nuisance to the residents in the surrounding properties.
23. The Sub-Committee acknowledges that not all of the persons in the vicinity of the premises causing anti-social behavior have frequented this venue, but they are persuaded by the evidence of the interested parties that this venue is attracting a large number of people and many are congregating outside and creating a public nuisance. The increase in hours will only serve to exacerbate the situation and there is a real likelihood that whatever measures the premises put in place, the disturbance to residents will continue until the premises close.

Licensing Objectives

24. Taking each of the licensing objectives in turn the Sub-Committee makes the following decisions on the four licensing objectives.

Public Safety

25. No relevant representation has been received. It is not necessary for the Sub-Committee to consider this further.

The Protection of Children from Harm

26. No relevant representation has been received. It is not necessary for the Sub-Committee to consider this further.

Crime and Disorder

27. The Sub-Committee acknowledges that Surrey Police discussed the application with the applicant before the hearing and agreed a condition concerning the number of door supervisors and the requirement to keep this under review. As this condition was agreed no representation was made by Surrey Police. The Sub-Committee considers that there are no issues of crime and disorder for consideration.

The Prevention of Public Nuisance

28. The Sub-Committee found that the key element for consideration was whether the application would undermine the objective on the prevention of public nuisance. The Sub-Committee concluded that despite the measures put forward by the applicant in both the current operating schedule and the measures put forward at the hearing, granting the application would undermine this objective.
29. The National Guidance at para 2.32 states "It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the impact of the licensable activities at a particular premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable." The guidance then goes on at para 2.33 to define nuisance and states "Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community".
30. The Sub-Committee recognises that this is a town centre location, but there are residential pockets within it. It is persuaded by the evidence of the residents at the hearing and in the written submissions that they are currently being subjected to nuisance caused by customers frequenting these premises. This can be evidenced by residents stating that they are unable to sleep with their windows open due to the noise of persons outside the

premises and also due to the noise emanating from the premises when the doors are frequently opened and closed. The Sub-Committee considers that it is disproportionate for this level of nuisance to continue until a later hour, when residents would like to be sleeping.

31. The Sub-Committee considered whether the imposition of conditions could address the issue of a nuisance being caused at a later hour. It concluded that they would not. Many of the representations made related to disturbance from people immediately outside of the premises. The National Guidance states at para 2.38 “In the context of preventing public nuisance it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by anti-social behavior of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.” The Sub-Committee is persuaded by the evidence of the interested parties that nuisance is being caused by persons who are within the control of the premises. The residents spoke of persons outside the premises smoking and milling around. The Sub-Committee took on board that the premises have started to draft a smoking policy to limit the numbers let outside to smoke to 25. The Sub-Committee does not see that such a policy will be enforceable in practical terms; the Sub-Committee does not consider that door supervisors will be able to hold persons inside the premises if 25 persons are already in the smoking area. The Sub-Committee also considers that even if a maximum level of persons was enforceable, a number of 25 is high. 25 persons can make considerable noise in the early hours of the morning when ambient noise is low. In this particular location beside the river and in an open square, the noise is likely to travel across Market Square and disturb residents.

32. The National Guidance states at para 2.39 “Beyond the vicinity of the premises, these are matters for personal responsibility under the law. An individual who engages in anti-social behavior is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the license holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.” The Sub-Committee has concluded that the current level of nuisance is being caused by people within the vicinity of the premises, with some 50 people being outside the premises the previous weekend and patrons are not leaving quietly despite notices being in place requesting them to do so. A continuance of this level of disturbance would be unacceptable to a later hour.

33. The applicant's representative stated at the hearing that his client would agree to a condition to install an acoustic lobby at the premises to prevent noise escaping from the premises. The Sub-Committee concludes that may stop the noise escaping from inside the premises but would not prevent unacceptable levels of nuisance to the residents from people queuing to enter these premises, those in the vicinity smoking and those leaving the premises.

34. A condition stating no new entrants after 02:30 was also submitted by the applicant's agent to overcome the problems, but the Sub-Committee is not convinced that this type of condition would ensure that the objective is not undermined. It will not prevent people standing around outside of the premises to smoke and will not prevent disturbance upon leaving the premises. Such disturbance is already happening at the premises and it would be unacceptable to allow this to such a late hour.

Decision

35. For the reasons stated above, the Sub-Committee confirms that the application for the variation of the premises licence is refused.

Conclusions

36. That is the decision of the Sub-Committee. You have the right to appeal against this decision to the Magistrates Court within 21 days of receipt of the decision notice.

Cllr R.W. Sider (Ch.)
Cllr K.E. Flurry
Cllr Mrs V.J. Leighton

Date of Decision: 25 October 2010
Date of Issue: 29 October 2010