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Date: 8 February 2012

SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with s.52 of the LICENSING ACT 2003

Licensing Sub-Committee	2 February 2012
Applicant for Review	Cllr Patterson
In respect of	McDonalds Restaurant, Two Rivers Retail Park, Mustard Mill Road, Staines
Respondent	Mr Gary Adams

SUB-COMMITTEE DECISION

No action

1. This Sub-Committee has before it an application for a Review of the Premises Licence at McDonalds Restaurant, Two Rivers Retail Park, Mustard Mill Road, Staines. The Review is brought by Councillor Alan Patterson, ward councillor for Staines.
2. The Respondent is Mr Gary Adams trading as Jardin Valley Restaurants Ltd, who is the Premises Licence Holder.

ATTENDANCE

3. The following people attended the Sub-Committee hearing to make representations:
 - a. Councillor Alan Patterson, ward councillor for Staines, applicant for Review;
 - b. Mrs. Dawn Morrison, Environmental Health Manager
 - c. Mr Mark Hodgson, Environmental Health Officer, responsible authority;
 - d. Mr Tony Davis, interested party;
 - e. Ms Sarah Clover, Counsel, representing the Premises Licence Holder;
 - f. Mr Gary Adams trading as Jardin Valley Restaurants Ltd, Premises Licence Holder
 - g. Mr Ashuk Patel, Area Supervisor
 - h. Mr Abdul Waheed, Business Manager
 - i. Mr Sheri Moghul, Field Consultant

EVIDENCE

4. The Licensing Sub-Committee has considered all of the relevant evidence made available to it, including the application for review, detailed log sheets and representation from Environmental Health, 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. Councillor Alan Patterson, ward councillor for Staines, stated that he had brought the review due to the ongoing noise from the premises which residents had experienced for some time.
6. He stated that the drive-thru is just 20m from the residents' properties and in the absence of any other nearby businesses operating late at night, the residents believed that the noise disturbance from which they suffered was caused by McDonalds.
7. The residents' sleep was continually disturbed by anti-social behaviour which originated on the premises and continued throughout the night, seven days a week. Councillor Patterson asked that the premises close at midnight on Fridays and Saturdays and 11pm on Sundays to Thursdays.
8. It was established that Councillor Patterson could only see the rooftop of the restaurant and the McDonald sign from his house in Waters Drive.

9. Mr Tony Davis, interested party, explained that from the side of his house to the boundary of McDonalds restaurant was a distance of 20m. He had been disturbed by noise coming from the environs of the premises since November 2007 but it had become worse over the past year. He had a good idea of the direction from which the sound originated because of the orientation of his bedroom window.
10. He elaborated on the noise which was heard mainly at the weekends, but also in the week: car horns sounding to get the attention of the server at the drive-thru; people talking and shouting in their cars; engines roaring as cars speed off down the road and cars playing tunes on their horns. He believed most of the noise came from McDonalds customers using the car park at the front of the premises.
11. The noise usually woke him up but if it continued he made a complaint to the McDonalds restaurant and if the situation was not resolved, he also then complained to the police. He had rung McDonalds at night to ask them to tell the people making the noise to be quiet but the staff said they could not hear the noise at the front of the premises from where they were located at the drive-thru. By the time the management responded to the noise it was too late because he had already been awoken and disturbed. He asked that the premises be closed at midnight to prevent the disturbance in the first place.
12. It was established that Mr Davis could only see the rooftop of the restaurant and the McDonald sign from his house in Waters Drive.

Responsible Authority

13. Mr Hodgson, Environmental Health Practitioner with Spelthorne Council, detailed the Council's involvement in service requests in his written representations. Two complaints from the same resident about noise from McDonalds had been made in 2008 and closed as the complaint was not substantiated.
14. A further complaint was made in August 2011 and log sheets issued to three complainants who returned these in September 2011. As a result of these the Council's Licensing Team met with McDonalds' management and the police licensing team on 27 October 2011. A number of steps were agreed at this meeting and these were set out in a letter dated 3 November 2011 which was attached to Mr Hodgson's representation.
15. Mr Hodgson confirmed that he had not witnessed any noise nuisance at McDonalds restaurant in the Two Rivers Retail Park and that he had not visited the complainants' houses to satisfy himself regarding noise disturbances.

16. During the discussion Mr Hodgson explained that it would be difficult to precisely identify the location from which a horn was sounded as the way in which sound travelled depended on variable weather conditions.
17. Sergeant Scott, Licensing Sergeant at Surrey Police, had not made a written representation but his comments were included in the agenda papers. He stated that he had been informed by the Staines town neighbourhood sergeant that McDonalds regularly accepted persons on foot at the drive-thru window. Although the police had a record of 8 incidents, which had occurred after midnight, reported to them in the last 12 months they did not feel it necessary to request a closure at midnight

Premises Licence Holder

18. Ms Clover on behalf of the premises licence holder, explained that Mr Adams had taken over the premises in March 2011 but that the restaurant had been granted a licence for late night refreshment four years ago. The restaurant was located on a retail park where there was extensive free parking after 6pm for 400 cars. The restaurant itself could only accommodate 16 cars in its car park. There was a designated area for people to park and wait who had ordered a grill. They were contacted by pager when their order was ready for collection.
19. The retail car parks served a cinema which closed at 2am and other licensed premises in the town which were open until 1am. McDonalds' restaurant closed at 10pm. It was unusual for people using the drive-thru to park in the McDonalds' restaurant car park and eat.
20. Ms Clover submitted that as the residents were unable to see the car park and drive-thru from their houses that there was no visual evidence of the connection between the noise issues they had experienced and the restaurant. She further submitted that it was impossible to say with any certainty that the noise emanated from McDonalds, bearing in mind the proximity of the retail car parks, the A30 and the roads which ran through the retail park. She gave an example of an incident on 4 September 2011 recorded in the log sheets, which had been submitted with the review application, but in fact the premises had been closed on that day for annual cleaning of the air conditioning.
21. Mr Adams stated that he did not wish to have poor relationships with the residents and he made every effort to ensure the premises operation did not have an impact on them. As a result of the visit by the Environmental Health officer in October 2011, he had taken measures to address the residents' concerns, which included increasing overnight staffing levels from 4 to 7 Monday –Thursday and to 9 on weekend nights. Between midnight and 5am staff

monitored the outside of the premises. He said that he was happy to take such steps even if the noise nuisance was not in fact emanating from his premises.

22. Mr Adams added that it was not his experience that their customers were drunk or rowdy. The car park monitoring patrols had not identified any noise problems from people parked. It is McDonalds' policy, with which the restaurant complied, not to serve people on foot at the drive-thru. Most of their business came from workers driving to or from work and they had not experienced noise problems from these customers. There were not usually problems with people having radios turned up loud whilst being served at the drive-thru because they turned them down to give their order at the window.
23. During the discussion, Mr Adams was asked whether it would be possible to close off the car park at night by use of a barrier. He admitted that he had not considered that use of the car park at night was an issue, but he was prepared to speak to the head office to see if this was something that he could introduce. However, the Licensing Manager reminded him that this suggestion came up at their meeting in October and they concluded that it may not be possible to use a barrier as this would remove the waiting facility for people who had ordered a grill. Consequently they would have to wait in the drive-thru queue, which would cause a hold up for other customers and the potential for noise nuisance to arise.
24. Ms Clover submitted that neither of the responsible authorities was supporting the review to ask the Sub-Committee to take steps to promote the licensing objectives. McDonalds worked closely with the police who undertook regular patrols of the retail park and had still not identified a problem of the nature described by the complainants which would lead them to make a representation.

FINDINGS

25. 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 as to the remedies which are available and any steps which might be necessary to promote the licensing objectives.
26. The Sub-Committee has sympathy with those residents who live in the vicinity of the Two Rivers Retail Park and who have made complaints of noise disturbances late at night. The Sub-Committee finds it significant that residents from only two households have provided detailed evidence. The location of the premises is on a retail park surrounded by public car parks and the residents are not able to view the operation of the premises and its car park from their homes. The Sub-Committee therefore considers that most of the incidents contained in

the logs are based on conjecture in terms of the source and reason for the sounding of car-horns and other noise.

27. The Sub-Committee acknowledges that McDonalds has attempted to address the alleged problem of people waiting for service, by providing more staff. McDonalds has stated that it would continue to monitor the situation in this respect.
28. In making a decision, the Sub-Committee has to be satisfied that the noise disturbances complained of by the residents are directly attributable to the licensable activities taking place at McDonalds' premises situated in the Two Rivers Retail Park. It has borne in mind the case of Thwaites and the judgement of Mrs. Justice Black that a Sub-Committee cannot act on a hypothesis. It is essential, before action is taken, for this Sub-Committee to establish a causal link between the noise complained of and the licensable activity undertaken at the McDonalds' premises.
29. The Sub-Committee has examined and considered the evidence and is not satisfied that a causal link has been established in this instance.
30. The evidence provided by the police is unequivocal in that it was felt that there were no grounds for requesting a closure at midnight.
31. The evidence provided by the Council's Environmental Health section was such that the noise disturbances complained of could not be substantiated, with no link established to warrant further investigation.
32. The Sub-Committee acknowledged that a meeting was held between the licence holder, the Council's Licensing Manager, Environmental Health Officer and the police on 27 October 2011, to discuss the concerns which had been raised by the residents. It is noted the licence holder has taken steps in an attempt to address the situation and it is hoped that they will continue to do so.

LEGAL POSITION

33. National Guidance on determination of a review at paragraphs 11.15 and 11.16 states:
 - "11.15 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.
 - 11.16 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives."

DECISION

34. 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.
35. The Sub-Committee has not been able to identify a causal link between the premises and the noise suffered by the residents. It therefore considers that it does not need to take any steps for the promotion of the licensing objectives and has decided to take no action on this review.
36. The Sub-Committee hopes that residents will liaise with the Council's Environmental Health section and the police if they encounter noise disturbances in the future.

Cllr. C.M. Frazer (Chairman)

Cllr. Mrs J. Dale

Cllr. Ms. M. Bushnell

Date of Decision: 2 February 2012

Date of Issue: 8 February 2012

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.