

LICENSING SUB-COMMITTEE HEARINGS

17 DECEMBER 2010

Present :- Councillor Barrie Cook (Chairman)
Councillors Mary Blandon and John Bouckley

1. Appointment of Chairman

RESOLVED that Councillor Cook be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Application under the Licensing Act 2003

The Head of Environmental and Protective Services submitted a report in relation to the following application for determination by the Sub-Committee, in accordance with the provisions of the Licensing Act 2003.

The What Bar, 7 Queen Street, Colchester

The Sub-Committee considered an application for a variation of a premises licence in respect of The What Bar to permit –

- The provision of live music, recorded music, performance of dance, other music or dance entertainment, facilities for making music, facilities for dancing, other facilities for music and dance indoors and late night refreshment.
- Non-standard timings in respect of Opening Hours on New Year's Eve

In Attendance

Applicant: Mr West (21st Century Licensing), Mr Douglas Archell (Applicant and Licence Holder), Mr Bob Archell (Management) and Mr Raymond Gray (witness and local resident)

Responsible Authorities: Mrs Parkin, Environmental Control

Officers: Mr Harvey, Licensing Manager; Ms Tuthill, Committee Services Assistant (Licensing); Mrs White, Committee Services Officer (Licensing); Mr Wilkins (Principal Lawyer) and Mr Samuel (Legal Executive)

Mrs White, Committee Services Officer (Licensing), briefly introduced the application and advising that a representation had been received from Environmental Control.

Mr West presented the application to the Licensing Sub-Committee and sought permission from the Chairman to hear a witness on the applicant's behalf and to consider four letters in support of the application. There were no objections from any of

the parties present to these being heard and after hearing further information about the witness and letters of support, the Chairman on balance decided to allow the witness and letters. Mr West then proceeded to serve a brochure of information relating to the application and premises, on all those present at the Hearing.

Mr West explained to the Sub-Committee that his client was applying for late night refreshment and to increase the regulated entertainment and that they were not seeking to alter the supply of alcohol, opening hours or exhibition of films. The applicant's representative also stated that no objections had been made in relation to this application by Planning, the Police or any person living or working within the vicinity of the premises. The applicant's representative read aloud extracts from the Section 162 Guidance which he believed embraced the application.

In reference to the representation that had been submitted by Environmental Control, Mr West believed that this had been based on noise complaints caused by historic mismanagement and went on to explain the ways in which the applicant had tried to address Environmental Control's concerns about noise. These included the removal of the disc jockey stand, relocating the music stage to the rear of the building which was built in 1988, not Grade II Listed and was better insulated against noise outbreak. The size of the stage meant that it had a limited capacity and would not be able to cater for bands of more than four people. Mr Douglas Archell explained that he would like the premises to become a music bar for local bands to play jazz and rhythm and blues and that he did not want it to be a nightclub. The applicant also explained that following some music tests which had taken place at the premises, the cellar had proved to be a particular problem. To overcome this, the cellar ceiling had been insulated as well as two air vents. In order to address historic complaints about noise escaping when patrons exited the premises to smoke, an entrance lobby had been created and the fire exit door would only be used in the event of a fire.

Mr Bob Archell explained that once the management team had seen Environmental Control's objection to the application, they had sought architectural advice on reducing noise emanating from the premises as part of the renovation of the premises. Two noise tests were later carried out at the premises and showed that the level of noise had dramatically reduced. In response to this, Ms Parkin informed the Sub-Committee that noise from the premises should not just be based on the music, but also dance floors and people talking etc. Mr Douglas Archell informed the Sub-Committee that a Noise Management Policy had been produced for the premises and that they were happy to have this attached as a condition to the Premises Licence.

The Sub-Committee were shown a video clip of the type of music which the applicant intended to be played at the premises which was live acoustic music which was different to the DJ music that had been played at the premises in the past.

The applicant's representative, Mr West mentioned that the premises had recently had two Temporary Event Notices covering eight nights, and that there had been no noise complaints during this period. Mr West then introduced his witness, Mr Raymond Gray who lived directly behind the premises. Mr Gray commented that the music being played by the new owners was enjoyable and that the noise level was acceptable to himself and his partner and that it had not impinged on his quality of life. Mr West

acknowledged that local residents could change so proposed a condition that the side door of the premises be changed as per the 5 conditions stated in the material put before the Sub-Committee.

Mr West informed the Sub-Committee that the premises would now be trading under the name of Tin Pan Alley and that the Designated Premises Supervisor would be Mr Douglas Archell, the applicant.

Mrs Parkin stated that Environmental Control's objection to the application had been based on a long history of noise complaints about the premises from local residents. The Sub-Committee was informed that two noise abatement notices had been served on the premises; the first in 2004 and the second in July 2010. Environmental Control had not been aware until very recently that not all of the building was Grade II Listed, but re-iterated that the listed (front) part of the building could not be made soundproof. Mrs Parkin did not object to any of the conditions proposed by the applicant and confirmed that Environmental Control had not received any complaints when the recent Temporary Event Notices had taken place.

The location of the premises in the Stress Area was raised and Mr Harvey, the Council's Licensing Manager, set out the Council's Policy in relation to this area and the presumption of refusal unless the Sub-Committee was satisfied that granting the application would not undermine the licensing objectives.

In the applicant's closing statement, Mr West said that the premises was intended to be a community venue catering for a niche market. Mr West also commented that he believed Environmental Control's objection to the application to be speculative and based on historical evidence. Other points raised included that there had been letters in support of the application, no objections had been received from residents, conditions had been proposed by the applicant, measures had been taken to reduce noise emanating from the premises and a Review of the Premises Licence could be called if problems arose.

The Decision

To grant the application for the following hours and activities:

Performance of live music, playing of recorded music, performance of dance, other music or dance entertainment, facilities for making music, facilities for dancing, other facilities for music and dance indoors:

11.00 to 22.45 Mondays to Thursdays

11.00 to 00.15 Fridays and Saturdays

12.00 to 22.30 Sundays

Christmas Eve 11.00 to 02.00

New Year's Eve 11.00 to 02.00

Sundays of Bank Holiday weekends 11.00 to 00.30

Late night refreshment:

23.00 to 00.15 Fridays and Saturdays

Christmas Eve 23.00 to 02.00

New Year's Eve 23.00 to 02.00

Sundays of Bank Holiday weekends 23.00 to 00.30

Opening hours of the premises:

From 10.00 New Year's Eve until 02.30 New Year's Day

To remove the following conditions:

1. "Background Music Only"
2. "No under 18's on the premises"

The licence be granted subject to the following conditions -

Conditions proposed on the operating schedule:

1. Doors and windows will be kept closed whilst music is being played inside the premises
2. A "Challenge 21" policy will be introduced
3. A member of staff will hold a S.I.A qualification
4. No under 18s on the premises unless accompanied by a responsible adult.

Conditions offered by the applicant at the Hearing:

1. Side door to be replaced with one of heavy construction, well acoustically designed frame and fastenings.
2. The door to be kept for emergency use only and to be fitted with an audible and visual alarm and glass bolt
3. A noise limiter to be fitted at the premises and only accessible to the installation company. The noise levels to be determined in consultation with Environmental Control.
4. Sound levels from music to be controlled to ensure that it does not give rise to statutory noise nuisance within any adjacent dwelling.
5. No music shall be provided by way of "Disc Jockey".
6. To maintain the Noise Issues Management Policy for Tin Pan Alley attached to the licence and that no changes be made without prior agreement to Environmental Control. Save that the said policy will deem to be amended in order to comply with the conditions set out in this decision.
7. All deliveries to the venue to be made between 08.00 and 21.00.
8. No recycling or emptying of glass bottles outside the premises before 8.00 or after

20.00

Condition Imposed by the Sub-Committee at the Hearing:

1. Music can only be played within that part of the building that is not Grade 2 listed in order to address the concerns raised by Environmental Control.

Reasons for the Determination

The Sub-Committee had given careful consideration to all the representations and evidence, and was satisfied that the concerns raised by Environmental Control were adequately addressed by the amendment to the hours for regulated entertainment, and the additional conditions offered by the applicant at the hearing.

4. Close of Meeting

The meeting closed at 13.45.