

## WESTERN AREA LICENSING SUB COMMITTEE

---

### DRAFT MINUTES OF THE WESTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 30 MAY 2012 AT COUNCIL CHAMBER - COUNCIL OFFICES, BRADLEY ROAD, TROWBRIDGE, BA14 0RD IN RESPECT OF AN LICENCE REVIEW - GALAXY CAFFE

#### **Present:**

Cllr Allison Bucknell, Cllr Ernie Clark and Cllr Bill Roberts

#### **Also Present:**

Kirsty Butcher - Democratic Services Officer, Richard Francis - Senior Environmental Health Officer, Linda Holland - Public Protection Team - Licensing, Maggie Jones - Public Protection Team - Licensing, Grzegorz Modarezyk, Natasha Owen, John Ralph, Sheila Ralph, Damian Siegmuller, Sebastian Siegmuller, Salvatore Talarico and Paul Taylor – Senior Solicitor

---

#### 1 **Election of Chairman**

Nominations for a Chairman of the Licensing Sub-Committee were sought and it was

#### **Resolved:**

**To elect Councillor Ernie Clark as Chairman for this meeting only.**

#### 2 **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 1 – 6 of the Agenda refers).

#### 3 **Chairman's Announcements**

There were no Chairman's announcements.

#### 4 **Declarations of Interest**

There were no interests declared.

## 5 Licensing Application

### **Application for Review of a Premises Licence – Galaxy Caffe, 28 Roundstone Street, Trowbridge BA14 8DE**

The Licensing Officer introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration. The background of the history of the premises was outlined within the report (page 9 to 13 of the agenda refer). The review of the licence had been requested on the grounds that the premises had been causing a public nuisance. The grounds stated were:

- Prevention of Public Nuisance: Complaints had been received relating to the provision of regulated entertainment in the form of amplified music.

In accordance with the procedure detailed in the agenda, the Applicant (Mr Richard Francis, Senior Environmental Health Officer), the Interested Parties (Mrs Natasha Owen) and the Licence Holders (Mr Damian Siegmuller and Mr Sebastian Siegmuller) were given the opportunity to address the Sub-Committee.

There were no representations from Responsible Authorities.

Key points raised by the Applicant, Richard Francis, were:

- The structure of the premises was unsuitable, having three large single-glazed windows looking out on Roundstone Street and a single door entrance with no lobby which meant noise was easily transmitted out into the street.
- Two complaints regarding loud noise were received on 18 January 2012.
- Officers witnessed loud music being played at the Galaxy Caffe on 28 January 2012.
- Noise abatement notices had been served on both Mr Sebastian Siegmuller and Mr Damian Siegmuller on 17 February 2012.
- Subsequent visits to the premises by officers on 25 February 2012, 10 March 2012 and 14 April 2012 found that noise levels were in breach of the noise abatement notice and were causing a public nuisance.

Following questions from Councillor Bucknall the following was clarified by Mr Francis:

- On every random monitoring visit excessive noise levels had been witnessed.
- Monitoring logs were kept by the premises and had been provided to the Licensing Team
- Advice was given to the Licence Holders prior to the November hearing on what was an acceptable level, and encouraged the use of an acoustic expert. Officers have spoken since then with the Licence Holders.

Maggie Jones confirmed that a number of meetings had taken place with the Licence Holder where checking noise levels had been discussed, advice had been given and assistance offered.

Councillor Roberts enquired as to what advice had been given on noise control and it was confirmed that in November 2011 the Licence Holders had been recommended to use an acoustic consultant, and at one stage had spoken about installing an acoustic curtain. Mr Francis also confirmed that there were no police reports available.

Councillor Clark asked whether the abatement notices were appealed and it was confirmed they were not.

The parties were given the opportunity to ask question of the Applicant. Following questions from Grzegorz Modarezyk, on behalf of the Licence Holders, the following was clarified by Mr Francis:

- The guidance in Section 182 states that noise nuisance does not require a specific decibel level to be set. The level is based on the professional opinion of the responsible officer.
- No conversation had taken place with the residents living in the flat above.

Key points raised by the Interested Parties, Mrs Natasha Owen were:

- She fully supports the Galaxy Caffe both as a customer and an advocate of small business in Trowbridge, and was concerned only about the detrimental effect of the noise nuisance.
- Guests at her hotel had complained that there was no mention of a nightclub close by.
- She had to operate a damage limitation policy, including offering refunds to guests, to avoid bad reviews of her premises, affecting her business profitability.
- Her children were unable to sleep when the loud music was played.
- Two other premises that were given a licence for amplified music have either had their licence removed or have had complete work in order to comply with their licence.

The parties were given the opportunity to ask questions of the Interested Parties.

In response to a question from Councillor Bucknall, Mrs Owen confirmed that since the noise abatement notices had been served there had only been one or two instances of noise nuisance. Mrs Owen stated that generally the customers were very well behaved and that there was no problem when there was no music being played.

Councillor Roberts asked how much the hotel's profits had declined and was informed by Mrs Owen that the business could lose 50% of its profits on a

Saturday night if it had been noisy as her business was based on customers getting a good night's sleep.

Grzegorz Modarezyk, on behalf of the Licence Holders, asked how many times the police used their sirens on a Saturday night as the hotel was on the main exit way for the police leaving the station. He suggested that it was every ten minutes but Mrs Owen stated that it was only two or three times. A further question on whether there was a noise nuisance from any other places received a response of no from Mrs Owen.

Key points raised by the Grzegorz Modarezyk, on behalf of the Licence Holders were:

- The agenda pack was only received on 24 May 2012, and as such they could have been more prepared.
- The noise abatement notices served on 17 February 2012 were never received.
- The Licence Holders had no communication from officers since January 2012.
- Other businesses on the street cause other cars and people to be in the area – noise is coming from these.
- Noise monitoring equipment was purchased and in used by the weekend doorman. Logs are available although these were not asked for. A nightclub in town was visited to make measurements and learn, and on 18 January 2012 the noise level at Galaxy Caffe was reduced on the advice of the doorman after monitoring.
- Maggie Jones had visited twice, and at one visit all agreed the noise was excessive.
- Refurbishment was completed on a smoking area which helped to reduce the number of people going in and out of the front door.
- One report related to a night where a DJ brought in his equipment – this was the first and last time.
- No complaints had been received from the residents living above.
- The Galaxy Caffe is a beacon for Polish culture and is used by all cultures.

Following questions from Councillor Bucknall the following was confirmed by Mr Grzegorz Modarezyk on behalf of the Licence Holders:

- No amplified music was now being played, only the television.
- Noise over 100 decibels was not right for the space.
- No officer had been into the premises to speak with them or complete noise checks, although confirmation was given that they had spoken with Maggie Jones.

Councillor Clark asked for confirmation on when the agenda was despatched and Kirsty Butcher, Democratic Services Officer confirmed that agendas were

despatched on time and sent to each Licence Holder at the Galaxy Caffe, 28 Roundstone Street, Trowbridge.

Mr Francis confirmed that the statutory noise abatement notices would have been delivered by hand to the letterbox of the Galaxy Caffe, 28 Roundstone Street, Trowbridge.

The Chairman asked the Interested Parties, the Applicant and the Premises Licence Holders to sum up.

Mrs Owen highlighted that there was no issue with the business, however the licence application did not say it would be a nightclub and it was affecting both her business and her family.

Mr Grzegorz Modarezyk, on behalf of the Licence Holders apologised and stated that they do care. He highlighted that the owner of the Polebarn had said the situation had improved; no other residents had complained and suggested that this was an issue between businesses.

Councillor Clark reminded Mr Modarezyk that the review had been called by the Environmental Health Officer.

Mr Francis expressed the situation as being a nightclub, not a cafe. The initial intention may have been for a restaurant however this had changed into a nightclub where music was causing a problem.

The Sub-Committee members sought clarification on some points before retiring to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Sub-Committee then retired to consider the application at 12.00 pm.

The Hearing reconvened at 13.00 pm

Following the deliberations of the Sub-Committee Members, the Solicitor for the Council made a statement that no material legal advice had been given in closed session other than to remind members of the Committee of the options available to them, the subtle change in legislation which states the requirement of the Sub-Committee to take such steps as it considered appropriate for the promotion of licensing objectives and the criteria in the statutory guidance.

The Sub-Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council. The Sub-Committee also took into account their duties under s. 149 Equality Act 2011, in particular s. 149(1)(b), given the role that the premises played in the local Polish community.

### **Resolved:**

Having retired to consider the application, the decision of the Sub-Committee was as follows:-

The Western Area Licensing Sub Committee has resolved to amend the Premises Licence for the Galaxy Caffe, 28 Roundstone Street, Trowbridge as follows:

1. To remove recorded music (indoors) and live music (amplified) from the licensable activities. This is considered appropriate to address concerns regarding public nuisance, in particular noise. It is considered that the premises are unsuitable for these activities.
2. To reduce the hours of live music (acoustic) to between 10.00 hours and 23.00 hours. This is considered appropriate to prevent public nuisance and in particular to respect residents' right to peaceful enjoyment of their property as stated in Wiltshire Council's Statement of Licensing Policy.

### **Reasons:**

The Sub Committee considered the written representations from Richard Francis, Senior Environmental Health Officer, Mr Lee of Ho Wah restaurant and Natasha Owen of the Owen Hotel as presented in the agenda, together with the oral representations given at the hearing on behalf of the Public Protection Team, the Interested Parties and the Licence Holder.

In coming to the decision the Sub-Committee accepted the evidence presented by Richard Francis, Senior Environmental Health Officer that structure of the premises, having three large single-glazed windows looking out on Roundstone Street and a single door entrance with no lobby, meant that noise is easily transmitted out into the street,

The Sub-Committee accepted the evidence given by Linda Holland, Senior Licensing Officer which detailed a late night inspection of the premises on 28/29 January 2012 where the officers considered that the volume of the music being played at the Galaxy Caffe constituting a public nuisance.

The Licence Holders denied receiving the noise abatement order issued on 17 February 2012, however the Sub-Committee accepted that these had been served.

The Sub-Committee accepted that a late night monitoring visit carried out on 25 February 2012 had established that music coming from the Galaxy Caffe was clearly audible at the entrance to Raleigh Court as presented in the statement from Mrs Susie Vowles, Public Protection Officer and that excessive noise levels coming from the premises had also been identified by Council officers on 10 March 2012

The Sub-Committee heard from Mrs Natasha Owens from the Owen Hotel, who detailed the effect of the noise nuisance on both her business and her family, who are resident at the same address. Mrs Owens stated she fully supported the Galaxy Caffe both as a customer and as an advocate of business in Trowbridge and was concerned only about the noise nuisance, which was having a detrimental effect on her children and her customers. Mrs Owens gave details of two other premises close by where live music was no longer allowed. Under questioning Mrs Owens confirmed that the situation had recently improved.

The Sub-Committee acknowledged that the Licence Holder had refurbished the back of the venue to create an outside smoking area to reduce the number of people going in and out of the front of the venue for cigarettes, and had purchased equipment to monitor noise. However, the grounds for review related to nuisance caused by the playing of live and recorded music and the Sub-Committee were satisfied that it was appropriate to modify the premises licence as set out above, in order to promote the licensing objective of preventing public nuisance.

In reaching its decision the Sub Committee has considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 52); the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

#### Right to Appeal

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of this decision. The amendments to the licence will not come into effect until the period for appeal has expired or, if an appeal is made, until that appeal has been disposed of.

(Duration of meeting: 10.30 am - 1.05 pm)

The Officer who has produced these minutes is Kirsty Butcher, of Democratic Services, direct line 01225 713948, e-mail [kirsty.butcher@wiltshire.gov.uk](mailto:kirsty.butcher@wiltshire.gov.uk)

Press enquiries to Communications, direct line (01225) 713114/713115

