

**WILTSHIRE COUNCIL**

**WESTERN AREA LICENSING SUB COMMITTEE**

**30 MAY 2012**

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**Application for Review of a Premises Licence; Galaxy Caffe 28 Roundstone Street, Trowbridge BA14 8DE**  
**Premises Licence Holders Sebastian & Damian Siegmuller**

**1. Purpose of Report**

- 1.1 To determine an application for a Review of a Premises Licence in respect of the Galaxy Caffe 28 Roundstone Street, Trowbridge, made by the Wiltshire Council's Public Protection Team.

**2. Background Information**

- 2.1 An application for the Review of the Galaxy Caffe's Premises Licence for the supply of alcohol, regulated entertainment & late night refreshment, has been made by Wiltshire Council's Public Protection Team in their capacity as the local authority with responsibility for environmental health. Following advertisement of the application, two further representations from interested parties have been received.
- 2.2 Wiltshire Council (as the Licensing Authority) must hold a hearing to consider the application having regard to the representations. In accordance with Section 52 (3) of The Licensing Act 2003, the Licensing Sub Committee is required to take such steps as it considers necessary for the promotion of the licensing objectives.
- 2.3 The licensing objectives are:
- i) The Prevention of Crime and Disorder;
  - ii) Public Safety;
  - iii) The Prevention of Public Nuisance; and
  - iv) The Protection of Children from Harm.
- 2.4 Such steps are:
- i) To modify the conditions of the licence.
  - ii) To exclude a licensable activity from the scope of the licence.
  - iii) To remove the designated premises supervisor.
  - iv) To suspend the licence for a period not exceeding three months.
  - v) To revoke the licence.
  - vi) To determine that no steps are necessary

Government Guidance issued under s.182 of the Licensing Act states that:

“Licensing Authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives.

- 2.5 Since June 2011 the premise benefits from a Premises Licence issued under the Licensing Act 2003. The original application for licensable activities operating from 1000 to 2300 hours Monday to Sunday, defined the premises as a restaurant. The licensable activities applied for and subsequently granted, were for the supply of alcohol (on the premises) and recorded music, described as quiet romantic music, background. The premises at this time were to be know as ‘The Little Daisy’.
- 2.6 An application to vary the Premises Licence was submitted in October 2011. The variation was for the inclusion of plays, live music, performance of dance, karaoke, facilities for dancing, late night refreshment. It also requested extending the hours for all licencesable activities until 0200 the following day. The application also specified a change of name of the premises to the ‘Galaxy Caffé’.
- 2.7 The application was subsequently granted at a hearing of the application in December 2011. The hearing being called following an objection on the grounds of public nuisance by an officer of Wiltshire Council, with responsibility for environmental health acting as a Responsible Authority as defined in the Licensing Act legislation. A copy of the decision notice is attached as **Appendix 1**.
- 2.8 The premises are operating as a café during the day and evenings, as a late night entertainment venue with its own customer base.
- 2.9 The current Premises Licence is attached at **Appendix 2**.

### **3. Details of the Grounds for Review**

- 3.1 On the 10 April 2012, an application for a review of the Premises Licence was served on the premises and the Licensing Authority. The review of the licence has been requested by Richard Francis, Senior Environmental Health Officer, Public Protection, Wiltshire Council, Bradley Road, Trowbridge on the grounds of the premises causing public nuisance. The grounds for review are:

Following the grant of a licence for the Galaxy Caffé in December 2011 the Public Protection department of Wiltshire council received a number of complaints relating to the provision of regulated entertainment in the form of amplified music.

An investigation into the complaints confirmed the existence of a nuisance and subsequently it is the officers opinion that the prevention of public nuisance licensing objective is currently not being met.

- 3.2 The application for review is attached as **Appendix 3(a)**. The evidence relied upon by the Senior Environmental Health Officer in support of the application is contained within **Appendices 3(b)**.

#### **4. Consultation and Representations**

- 4.1 The review process requires a public notice to be posted on the premises for a period of 28 days, together with a copy of the notice posted at the offices of Wiltshire Council, 165 Bradley Road, Trowbridge, Wiltshire, BA14 0RD. During the consultation period two further representations have been received and accepted from the following Interested Parties:

Ms N Owen, The Polebarn Hotel, Polebarn road, Trowbridge  
Mr Y C Lee, Ho Wah 29 Roundstone Street, Trowbridge

Also received is an email from two of Mr Lee's customers outlining their observations with regard to noise issues they have witnessed whilst dining at his premises.

The two further representations and the email from Mr Lee's customers are attached as **Appendix 4**.

- 4.2 The Sub Committee can take into account documentary or other information presented at the hearing with the consent of all other parties.
- 4.3 The Senior Environmental Health Officer's case:

The officer has specified the following as the reasons for calling the review:

- 4.3.1 A premises licence application for The Little Daisy Deli, 28 Roundstone Street, Trowbridge, Wiltshire was received by the council in May 2011, the applicants being Sebastian and Damian Siegmuller. The application related to a restaurant only and no provision of regulated entertainment was requested at that time.
- 4.3.2 In September 2011 concerns were made regarding the potential provision of recorded and live music at the premises, which had changed its name to Galaxy Caffe. Discussions with the premises licence holders revealed that there was no intention to provide regulated entertainment at the venue, however following this conversation an application to vary the licence was received by the Council on 31 October 2011. The variation was to include live music, recorded music and anything of a similar description.
- 4.3.3 On 06 November 2011 an out of hours call was received by the Public Protection department about noise from recorded music at the premises. In this instance an officer witnessed excessive noise levels from the venue.

- 4.3.4 Having been informed of excessive levels due to amplified music I had concerns about the acoustic properties of the premises, and subsequently I met with the applicants on a number of occasions to discuss my concerns. At the time I did not feel that the prevention of public nuisance licensing objective could be achieved and therefore I made a representation to the licensing authority dated 24 November 2011.
- 4.3.5 In addition a representation was made from an Interested Party regarding this variation. An Area Licensing Sub Committee meeting was held on 22 December 2011 to hear the application in full. Whilst I again raised concerns about the acoustic properties of this premises a licence was granted permitting recorded music until midnight Monday- Sunday and live music until midnight Monday- Sunday.
- 4.3.6 On the 18 January 2012 a number of complaints were received regarding loud music coming from the Galaxy Caffe. On 19 January 2012 a letter was sent to Mr Sebastian Siegmuller and Mr Damian Siegmuller advising that complaints had been received. The Council continued to receive complaints and Wiltshire Council licensing officers witnessed excessive noise levels from the premises on 28 January 2012. In view of the continued complaints and the officer observations noise abatement notices were served on Mr Sebastian Siegmuller and Mr Damian Siegmuller under Section 80 of the Environmental Protection Act 1990 on 17 February 2012.
- 4.3.7 On 25 February 2012 at 2220 Susie Vowles, Public Protection Officer witnessed excessive noise levels coming from the Galaxy Caffe. The noise witnessed constituted a breach of the noise abatement notices and also clearly demonstrated that the prevention of public nuisance licensing objective was not being met.
- 4.3.8 On 10 March 2012 from 2200 onwards myself and Susie Vowles witnessed a number of further breaches of the noise abatement notices and again the prevention of public nuisance licensing objective was not being met.
- 4.3.9 Following the service of the notices and officers having witnessed a number of breaches I am satisfied that the prevention of public nuisance licensing objective has been and continues to be ignored by the two holders of the premises licence, Mr Sebastian Siegmuller and Mr Damian Siegmuller. Therefore I have no other option than to request a review of the premises licence.
- 4.3.10 It is clearly evident that the premises are unsuitable for the provision of recorded and live music and as such I would request that these provisions be removed from the premises licence.

*Note: The Officer may not raise matters at the hearing unless they have already referred to them in the review application. The Licensing Authority may nevertheless take into account documentary or other information produced by the Public Protection Officer in support of their application, if it is provided to the Licensing Authority before the hearing, or at the hearing with the consent of all the other parties.*

4.4 A location map of the premises and surrounding area is attached as **Appendix 5**.

## **5. Legal Implications**

5.1 This Hearing is governed by the Licensing Act 2003 (Hearings) Regulations. These provide that hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public.

## **6. Officer Recommendations**

6.1 Officers are not permitted to make a recommendation – the decision is to be reached by the members of the Licensing Sub Committee.

## **7. Right of Appeal**

7.1 It should be noted that the Premises Licence Holder and the Responsible Authority may appeal the decision made by the Licensing Sub Committee at the Magistrates Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the decision.

7.2 In the event of an appeal being lodged, the decision made by the Licensing Sub Committee is suspended until any appeal is heard and any decision made by the Magistrates Court.

7.3 The Premises Licence Holder and all Interested Parties have been informed of the date, time and location of the Hearing and their right to attend and be represented.

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16 May 2012

### **Background Papers Used in the Preparation of this Report**

- **The Licensing Act 2003**
- **The Licensing Act (Hearings) Regulations 2005**
- **Guidance issued under Section 182 of the Licensing Act 2003**
- **Wiltshire Council Licensing Policy**

### **Appendices**

- 1 Decision Notice**
- 2 Current Premises Licence**
- 3a Application for Review**

- 3b Evidence in support of Application for Review**
- 4 Additional representations and email**
- 5 Location plan of the premises and surrounding area.**