

## **BOROUGH OF REIGATE AND BANSTEAD**

### **LICENSING SUB-COMMITTEE**

Minutes of a meeting of the Licensing Sub-Committee held at the Town Hall, Reigate on Monday 29 September 2014 commencing at 11 am

Present: Councillor F. Kelly (Chairman); Councillors S. Bramhall and B. Truscott

#### **7. APOLOGIES FOR ABSENCE AND RECONSTITUTION OF THE SUB-COMMITTEE**

Apologies for absence were received from Councillor Mrs Poulter before the meeting, as she was no longer able to attend to chair the hearing.

Councillor Kelly was therefore appointed from the list of available Chairmen to chair the meeting and membership was as set out above.

#### **8. MINUTES**

Resolved that the minutes of the meetings held on 7 April 2014 be confirmed as a correct record and signed.

#### **9. DECLARATIONS OF INTEREST**

There were no declarations of interest.

#### **10. LICENSING HEARING PROCEDURE NOTE**

**RESOLVED**, to note the procedure note, to be followed at the discretion of the Chairman.

#### **11. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE: MRS SMITH'S TEA ROOM, 45 NORK WAY, BANSTEAD**

*In attendance and speaking at the hearing:*

*Applicant:* Mr Alan Machado

*On behalf of the applicant:* Mrs L Andrade  
Mr P Machado  
County Councillor N Harrison  
Mrs J Nice  
Mrs J King  
Mr T King

*Licence holder:* Mrs H Smith

*Responsible authorities:* Mr M Hume (Surrey Police)  
Ms C Rogers (Environmental Protection)

*Licensing officer:* Mr P. Holliday

The Committee considered an application for a review of the premises licence at the above premises.

The licensing officer presented the application.

The report before the Sub Committee set out the details of the application and included copies of the representations received from local residents, raising concerns of public nuisance and harm to children.

It was noted that the responsible authority for environmental protection had asked for its statement on noise recordings, made after the issue of the agenda, to be taken into consideration. The Chairman had agreed to this, following consultation and the agreement of all parties.

A copy of the relevant statement was tabled.

The applicant was invited to present his case, during the course of which the following points were noted:

- Mr Machado had made the application on behalf of his mother, Mrs Andrade, who lived above the premises, as well as on behalf of the neighbouring residents at Nos. 47a and 39a, all of whom were being adversely affected by the noise.
- Mrs Andrade had lived in her flat for the past 26 years and was the owner.
- She had seen a number of different uses at the premises over the years, but this was the first time that she had ever had cause to complain.
- With the agreement of all those present, Mr Machado tabled photographs of the premises, indicating the location of each property.
- Following the meeting in December 2013, at which Mrs Smith was granted her licence, the minutes referred to her intention for the venue to be somewhere that customers could have a glass of wine and meet friends in the evening. Mrs Smith stated that there was no bar on the premises and no intention to operate as an off-licence.
- Since July 2014, however, the premises had been operating as a wine and tapas bar, open until 11 pm on Thursday through to Saturday evenings.
- Advertisements from social media, attached to the review papers, made it clear that the venue was offering drinks promotions 'from the bar' as well as promoting its availability for hen parties, wedding parties and other celebratory events.
- The resultant noise and disturbance, frequently carrying on until the early hours of the morning as staff cleared up and moved furniture, was having a serious impact on the health of local residents, who were finding it impossible to sleep or to lead a normal life over the weekends when events took place.

- This included a number of young children who were being prevented from going to bed at a reasonable time because the noise was both distressing and disturbing them.
- On several occasions Mrs Andrade had telephoned her sons in tears, upset because of the relentless noise and disturbance, and a letter from her doctor was attached to the review documents, attesting to the impact upon her health.
- Other neighbours with young children were having to go and stay with family members living elsewhere at the weekends to try to get some respite.
- Nork Way was a small parade of shops in a residential area and was not suited to a venue of this type.
- There was no proper soundproofing in the building, so the noise was travelling straight up into Mrs Andrade's flat above.
- It was equally audible in the adjoining flats at Nos. 39a and 47a, on whose behalf the review was also being requested.
- The disturbance was compounded by people sitting at tables outside late into the evening, talking, laughing, smoking and generally making a noise.
- Residents were having to keep their windows closed whenever an event took place, to try to mitigate the nuisance, but even then it was impossible to sleep, particularly during the summer months when it was also very hot.
- Affected residents had met to discuss the situation and to see whether there was a way to accommodate Mrs Smith's new business practice but they could see no options for achieving this.
- There were two other restaurants in the parade, one of which (Galu) did also cause noise and disturbance, but this was being monitored by residents separately and was not relevant to this application.
- Furthermore, this premises had no one living above it and there were conditions restricting its opening hours.
- Neighbours had been maintaining a log in recent weeks, included within the review papers, which cited various instances of loud noise, banging and chanting and general merriment, preventing them from sleeping or leading a normal life in the evenings.

In support of Mr Machado, Mr and Mrs Young made particular reference to their two small children whose behaviour was being affected by the disturbance to their normal sleeping pattern.

Mrs Young was thus having to deal with two young children who were fractious in the day because of lack of sleep, which only added to the stress and impact upon herself due to her own sleep deprivation.

Mr Young's two children from a previous relationship also stayed over every other weekend, and they were equally finding it impossible to sleep until late in the evening because of the noise and disturbance.

One of these children had specific health problems and the sleep deprivation was causing considerable concern.

County Councillor Harrison spoke on behalf of a number of the residents and made the following additional points:

- The licensing regime was intended to be a light touch process, and licence applications would normally be granted unless there were substantive reasons not to do so.
- The review process was designed as a mechanism to then deal with any problems which arose out of the issue of a licence.
- The key issue in this case was the noise and disturbance being caused to local residents and the level of impact this was having upon them
- Tables and chairs were now used outside and the door to the premises was frequently left open, allowing the noise to escape.
- It was true that Surrey County Council had granted a licence for tables to be placed outside, but their main consideration in doing so had been to ensure there remained a clear passage for pedestrians and not noise or disturbance.
- The main problem was the noise passing through the walls and floors because of the lack of soundproofing. This was exacerbated by the glass atrium and its proximity to the properties.
- Part of the review application related to the impact upon children. Although noise was not specifically included within the RBBC licensing policy relating to the protection of children from harm, the national guidelines made it clear that consideration should not just be physical, and that any moral or psychological effects should be taken into account and that these could be interpreted widely.

Mrs Andrade also made a personal statement about the impact of the noise upon her. Not only was she physically unable to sleep whilst the noise was ongoing, but the, impact, stress and resonance in her head went on long afterwards so that sleep would often only come in the early hours of the morning.

In the week, she would also be dreading the forthcoming week-end, so it was a never-ending spiral of stress and anxiety.

Mrs Andrade owned the flat above and had lived there for 26 years. It was her view that she was entitled to enjoy the comfort of her own home without intrusion and that this was no longer possible because the noise was now controlling her life.

Mr P Machado also spoke in support of his mother, again stressing the detrimental effect the noise was having upon her health and how it was preventing her from sleeping or leading a normal life.

Mrs Nice added her comment that the three families affected were reliant upon the discretion of the legal system, as they had no other powers to stop the noise.

Mr Hume made representations on behalf of Surrey Police and the following points were noted:

- At the time of making written representations he had no knowledge of any reported incidents.
- He had since become aware of a noise incident reported by neighbours at 22h49 on 12 September. Further research had also shown that the licence holder reported the neighbour banging on the ceiling of the atrium with a broom on the night of 1 August at 23h39.
- Although no representation was being made by the Police on the grounds of crime and disorder, there were concerns about the wording of the conditions attached to the licence, which were open to interpretation and ambiguity.
- The Police representation set out the specific conditions which needed to be tightened. These related to the CCTV, the alarms, placement of fire extinguishers and fire exits, and requests for patrons to leave quietly.

Ms Rogers presented representations on behalf of the responsible authority for environmental protection and referred to the statement tabled at the meeting.

Residents had been asked to keep a record of the noise nuisance and a sound recorder had also been placed in their homes to monitor the noise.

The recordings taken over two weekends showed a general level of noise, progressively getting worse throughout the evening, on a Friday and Saturday night. Whilst the level of noise may not technically constitute a public nuisance, it was clearly audible from the flat above and it was fair to say that it would be intrusive to the residents.

The Chairman invited the licence holder to respond to the representations made by the applicant for the review.

Mrs Smith responded and made the following points:

- The premises were as stated in her original application, a venue for mature adults which operated as a shop and tearoom during the day, and a wine and tapas bar in the evening.
- There were a number of inaccuracies in the representations made including the following:
  - there were no party nights in June and, in any event, it would be wrong to call them party nights;

- the licence was granted in December 2013 but the longer hours on Thursdays through to Sunday only started on 11 July;
- bottles were not being disposed of at night and were only put out during the working day;
- her partner had provided local residents with his email so that they could contact him if they wanted to mediate;
- residents had commented that she was dismissive towards their concerns but they were the ones now saying that there was no room for negotiation.

The Chairman opened the floor to questions, during the course of which the following points were noted:

*In response to a question about whether the licence holder would be willing to liaise with the Police in response to concerns about the conditions:*

Mrs Smith responded that she already liaised with the Police and was happy to do so.

*In response to a question about the degree of changes in how the premises now operated, and whether or not her original description at the licence application hearing, of a tranquil venue with no bar, remained accurate:*

Mrs Smith concurred that the hours had been extended on the Thursdays through to Saturday because business had been slow.

*In response to a question about whether residents had any problems with the other restaurant in the parade:*

Mr and Mrs King responded that they had no issues as it was generally quiet with no seats outside.

*In response to a question asking the licence holder whether she would be willing to make any voluntary concessions to alleviate the residents' concerns:*

Mrs Smith responded that she would be willing to stop using the tables and chairs outside after 22h00, but that it would be necessary to continue to allow people to go outside to smoke.

In conclusion, the Chairman invited the parties to summarise their representations.

On behalf of the applicant, Mr Machado made the following concluding remarks:

- Mrs Smith's Tea Room was now operating a new business model, being in effect an alcoholic venue and bar, and it was causing a public nuisance.
- The nuisance from the noise was affecting the basic human right to peace and to be able to sleep, and it was also harmful to children, which was a further licensing objective.
- The premises was not designed to operate as a pub or to allow for entertainment to take place.
- The applicants invited the Sub Committee to listen to the pleas of residents whose quality of life and wellbeing was being affected.

The licence holder, Mrs Smith, referred to her earlier representations and written representations, and had nothing further to add.

*(The Sub-Committee adjourned to deliberate at 12.01 pm and resumed at 1.14 pm to give its decision.)*

**RESOLVED** that the licence be amended as follows:

**Supply of alcohol on and off the premises (section J); and Hours premises are open to the public (section L):**

09h00 to 18h00	Sunday to Wednesday
09h00 to 22h00	Thursday
09h00 to 23h00	Friday and Saturday

**Modifications to be made to the conditions attached to the licence (Annex 2):**

1. Requirement for CCTV to be removed.
2. Premises to have both fire and burglar alarms which are silent on setting.
3. Outside seating area to be closed one hour before the premises close.
4. Liaison with Surrey Police on a monthly basis.
5. Clear signage to be visibly on display, at all points of entrance and exit, asking patrons to leave quietly.
6. Live music is prohibited at these premises.  
*Note: Section 177A (1) and (2) Licensing Act 2003 does not apply. Live music at these premises shall be a licensable activity as a result of this review application by virtue of Section 177A (4).*

**Observations:**

1. The Sub Committee strongly encourages the licence holder and all staff at the premises to monitor noise levels at all times during opening hours and to keep these to a minimum.
2. The licence holder is advised to liaise with the Fire Service in order to undertake a risk assessment in respect of the placement of fire extinguishers and fire exits.

**Reasons for the decision**

1. The Sub Committee reviewed all the papers contained in the report circulated with the agenda and those presented at the meeting.

2. It paid careful attention to the oral submissions made at the hearing, by the applicant and all others supporting the application, the licence holder, and the two responsible authorities, Surrey Police and Environmental Protection.
3. In particular, it noted that Surrey Police had raised no concerns about the running of the premises and that its representation primarily related to the wording of the conditions in Annex 2.
4. The Sub Committee took into account the Council's own Statement of Licensing Policy, the Guidance issued by the Secretary of State under s.182 of the Licensing Act 2003, the individual merits of the case, Human Rights legislation in particular Article 8 and Article 1 First Protocol and the rules of natural justice.
5. The Sub Committee considered that the applicant's representations relating to the prevention of public nuisance were persuasive to the extent to which the licence conditions and licensable activity have been modified today.

**It was noted that the written decision hereby issued takes precedence over the drafted decision released verbally at the close of the hearing.**

**The meeting closed at 1.17 pm.**