

REPRESENTATIONS ON BEHALF OF THE PREMISES LICENCEHOLDER

This is an application for review of the Premises Licence.

1. 23rd April 2020, a Notice was served upon Mr Arjan Borufi to review the Premises Licence.
2. The stated grounds was that an abatement notice had been breached in respect of a statutory nuisance arising “ from the production of noisy music and this is deemed to have undermined the licensing objectives – the prevention of public nuisance and prevent of crime and disorder”.
3. There was a requirement for the Premises Licence holder to display for a continuous period of 28 days from the date of the Notice, a blue A4 sized notice at or near the site of the Premises where it can be conveniently read from the exterior of the Premises by the public – this was complied with.

Timelines as to period of ownership

4. The Premises Licence holder challenges the relevant period of ownership insofar as the relevant period of ownership ought to be from when he became the Lessee of the Premises in or about October 2017 and the Relevant Premises Licence holder on the basis that the Premises Licence was transferred to him on 3rd October 2017 and he became the DPS on 22nd November 2017.

Accordingly, any periods of reckoning preceding those dates should be disregarded.

5. The Relevant Period for the complaints before the Committee should therefore run from October 2017 onwards.

Key points of the Licence

The Premises Licence allows for the Premises to be open from 8am to midnight, 7 days a week.

Supply of alcohol on the Premises from 11am to midnight, 7 days a week.

Live music indoors from 20:00 to midnight, 7 days a week and recorded music indoors from 10am to midnight, 7 days a week.

The evidence in support of the Review

6. The Premises Licence holder will rely on the correspondence passing between his Representative Solicitors and the Council Officers ahead of the Hearing, which can be found within the Bundle.

Summary

In summary, whilst it is accepted that there have been occasional noise issues at the Premises, the primary complainant being the tenant of the flat above the Premises, Premises Licence holder has sought to address these as advised by the Council.

He has also sought to investigate the reasons for the noise escape to the flat above the Premises, which is believed that the primary source of the complaints as set out in the Notice of breach.

7. A request for access for the acoustic engineer retained by the Premises Licence holder to attend the flat above, so as to establish the necessary premises sound insulation to alleviate the escape of sound to the flat above was refused by the resident above, in no uncertain terms.
8. The majority of the Additional representations relied upon in support of the Review have centred around matters relating to the Covid-19 pandemic issues, of patrons gathering outside or opposite the Premises or around the corner of the Premises, which do not “speak” to the objectivity that is required in addressing the issues before the Committee.
9. The Premises Licence holder’s representative reserves the right to address the Committee on specific issues such as those which may be relied upon in support of the Review by the Licensing Officer.

In general terms, we would comment on the additional information relied upon by the Licensing Authority, as follows:

- The additional information fails to identify in particular, the direct relevance of incidents from 31st April until 14th May insofar as the said “evidence” simply generalises and does NOT focus on the matters in relation to which the Notice was served.
- The Presenting officer contends that it is intended to show “how well the licence holder is able to control the behaviour of his customers”.

It is difficult to see how the conduct of patrons “off the Premises”, across the street and the conduct of members of the general public at large can be said to be subject to the licensing conditions at the Broomfield Café and Bar.

Our invitation to the Committee

- The Panel is invited to place more credence on the supporting representations at IP17 by the owner and landlord of 64 Aldermans Hill, which comprises the whole of the building of which the Licensing Premises are on the ground floor and also the representation at IP18 by a local resident of the Lakes Estate, who sets out clear and well-reasoned submissions in support of the Premises Licence holder.

The Applicable Tests

- We would invite the Committee in reaching its decision and in considering the evidence to apply an objective and fair balanced view as provided for under paragraph 3 of the Procedure Rules to be followed at the Hearing of the LSC, which Provides that whilst strict rules of evidence do not apply.; “They will however be followed to a great extent because Licensing sub-Committee decisions MUST be based upon objective assessment of evidence”.
- Paragraph 3.1 of the Procedure rules provides in particular, that “the LSC disregards any evidence or information that is irrelevant to the licensing objectives”.

Finally, we reserve the right to expand on our submissions and the Premises Licence holder’s representations at the oral Hearing.

AKIN PALMER LLP
SOLICITORS
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