

Licensing Act Sub-Committee - Record of Hearing held on Tuesday 7 September 2010 at 6.00pm

MEMBERS: Councillor SZANTO (Chairman); Councillors Mrs GOODALL and Mrs SALSURY.

1 Declarations of Interest.

None were received.

2 Review of Premises Licence – Big Apple, Beach Road.

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Licensing Manager outlined the report detailing the application for a review of a premises licence for The Big Apple, Beach Road.

The Health and Environment Noise Team had made an application for a review of the premises licence as a Responsible Authority under the public nuisance licensing objective. Sussex Police had made representations as a responsible authority under the crime and disorder licensing objective. A number of local residents had also made representations as interested parties under the public nuisance, crime and disorder and public safety licensing objectives.

Mr A Albon of the Council's Health and Environment Noise Team addressed the Sub-Committee and reported that a number of complaints had been received from local residents regarding noise from bands and DJ's playing recorded music. The nuisance to residents of properties in the area had been witnessed by officers on 9 and 17 July 2010. Meetings had been held with the premises licence holder and the designated premises supervisor prior to these dates to try and resolve matters, despite which the noise issues at the premises had not been remedied. Mr Albon advised that the premises were not adequately soundproofed and that breaches of licence conditions added by the Health and Environment team and accepted by the Big Apple as part of the premises licence to suppress noise from the premises had been witnessed by Council Officers. A noise abatement notice had been served on the premises.

Sussex Police had attended the premises on 6 June 2010 during the operation of a temporary event notice which had extended the operating hours until 02.30am. A call complaining of loud music from a local resident was received by Sussex Police at 01.24 hours and officers had attended the premises at 2.22am. Although the music had ceased officers remained to assist staff to ensure the bar was clear of customers by 2.30am.

Inspector Johnson addressed the Sub-Committee and reported that the police had made a number of licensing visits to premises in Eastbourne on 25 June 2010 which had included the Big Apple. The designated premises supervisor and the director of the Big Apple SE Ltd were advised on a number of matters

regarding the operation of the premises, its overall supervision, and given a warning not to allow disturbance to residents by loud music and noisy customers, particularly with reference to the forthcoming temporary event notice on 2 July 2010 and that all customers must be off the premises by the appropriate closing time.

On Saturday 3 July 2010 a number of local residents contacted the police and Council's Health and Environment Noise Team during the early hours of the morning. One complainant had stated that in addition to excessive noise, customers were still entering and leaving the premises until 03.30am. A meeting was held on 15 July 2010 with the Council Licensing Team, Sussex Police and representatives from Enterprise Inns following which letters were sent to the Big Apple management team setting out the Police's expectations in relation to the matters raised at the meeting.

The Sub-Committee was advised of a violent incident which had occurred at the premises on 8 July 2010 and two further serious incidents on 21 July and 1 August 2010 which had demonstrated that there was a lack of control at the premises and a disregard of the law.

On 22 July 2010 a closure notice was served under Section 19 of the Criminal Justice and Police act 2001 requiring the Big Apple to ensure that the CCTV system was repaired to full working order within a specified period of time..

The Sub-Committee was advised that at this stage the Police believed that the designated premises supervisor and the company directors exerted little control over the premises and that they had no confidence in the management who had demonstrated a lack of willingness to work in partnership with the Responsible Authorities.

Sussex Police had recommended that the current designated premises supervisor, Mr Carter be removed and that any new designated premises supervisor is first approved by the police prior to their appointment. In order to address all the issues raised and to ensure strong future management, the Police also recommended that the premises licence be suspended for a minimum of one month in order that the new designated premises supervisor is able to conduct appropriate staff training to ensure compliance with the conditions of the premises licence.

The premises licence holder's legal adviser, Mrs C Johnson, addressed the Sub-Committee and put forward a number of proposals for consideration to address the issues raised. Since the review had been lodged Mr Carter had been removed as the designated premises supervisor and the premises had been repossessed by Enterprise Inns. Mr G Fitzpatrick of Enterprise Inns had since been nominated as the new designated premises supervisor on a temporary basis. The premises had closed on 6 September 2010 and would remain closed until a new designated premises supervisor had been appointed and approved by the police. It was proposed that all regulated entertainment except films and sport be removed from the premises licence. As the intention was to revert back to a traditional pub operation, it was requested that the requirement for a door supervisor on Fridays and Saturdays be removed as a licensing condition. This was also required owing to the prohibitive cost of employing door supervisors.

Mr Albon was invited to comment on the proposals which were broadly welcomed. He stated that concerns regarding the use of the outdoor decking area remained and that complaints had been received from a local resident who lived adjacent to the premises. The use of the area was restricted by condition until 9.00pm but it was suggested that to prevent noise nuisance a closing time for this area of 6.00pm be considered.

Inspector Connaughton advised the Sub-Committee that when the premises were visited at 10.00pm on 28 August no door supervisor was present, which was a breach of the licence conditions. On a further visit to the premises on 3 September the staff on duty had not been able to present the required authorisation to sell alcohol in the absence of the designated premises supervisor. On a later visit the same day there had been no door supervisor present and only one member of staff was on duty, and that they had been unable to operate the CCTV system. It appeared that the replacement staff did not appear to be trained to the standard required by the licence conditions and that confidence could not be placed in the replacement management structure. Inspector Connaughton advised that in the opinion of the Police the requirement to provide door supervisors should remain a condition of the licence.

Mrs Johnson addressed the Sub-Committee and gave an overview of the operation of Enterprise Inns. The company took their responsibilities seriously and had acted swiftly and responsibly in response to the concerns. The premises had been repossessed from The Big Apple (SE) Ltd and Mr Fitzpatrick had been nominated as the designated premises supervisor. The variation of the licence sought and approved in February 2010 had significantly changed the operation of the premises with live music and DJ's. The removal of the majority of the permitted regulated entertainment would change the operation to a traditional pub and it was contended that it could in the future operate effectively without door supervisors. The Police had accepted that this would not normally be a condition attached to the premises licence of a pub.

She stated that it was not unreasonable to operate the outside area until 9.00pm and that although this was a heavy residential area Mrs Hitchen was the only person who had complained regarding its use. She expressed concern regarding the proposal to restrict its use to 6.00pm.

Mr Fitzpatrick stated that he had tried to work with the Responsible Authorities to address the situation which it was acknowledged had been out of control. Following the submission of the review Enterprise Inns had sought to find an interim management team. He reported on the current status of Mr Corbett who had been managing the premises on an interim basis. He explained that during the police visit on 3 September the required authorisation for staff to sell alcohol had been in place. It had been accepted that any new designated premises supervisor would be approved prior to appointment by the Police. Mr Fitzpatrick stated that all games would be removed from the games area and that its use as a supervised children's area was being considered.

Mrs Hitchen, whose property abutted the outside decking addressed the Sub-Committee and referred to the on-going problem of live music and that no attempt had been made to reduce the noise levels by fitting suitable glass in the windows and doors. It was clearly audible in her property and had continued to cause great stress and anxiety. The management of the premises

had very little respect for their neighbours and had largely ignored the constant requests to keep doors and windows closed and to control the excessive noise from the use of the pool room and outside area. She expressed concern at any suggestion that the current games room may be used in the future as a children's play area.

The use of the decking area had resulted in a complete loss of privacy and peace. The area was not policed by staff and swearing and excessive noise created by customers was a constant problem which started at 11.30am and continued until 9.00pm. The only solution to restoring her peace would be to close the outside area and not permit its use for any licensable activities. She thanked officers of Health and Environment and the Police for their efforts to tackle the noise and crime and disorder issues raised by local residents.

Mrs Briggs addressed the Sub-Committee in support of Mrs Hitchen and referred to the problems she and her mother had experienced with Big Apple staff and that since they had complained about the operation of the premises they had been subjected to intimidation. The current staff and customers using the area continued to make excessive noise and their behaviour was anti-social and offensive.

The Sub-Committee acknowledged and took into account those letters of representation submitted from interested parties not present at the hearing.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted and the further evidence presented at the meeting, the four licensing objectives and the Council's Statement of Licensing Policy. Advice had been sought from the legal advisor regarding the powers of the Sub-Committee under the review process and the weight to be attached to the guidance and evidence submitted.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

RESOLVED: That the premises licence in respect of The Big Apple, Beach Road be amended for the reasons as set out in the attached appendix.

The meeting closed at 8.40p.m.

**G Szanto
Chairman**

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Tuesday 7 September 2010

- Premises Licence Holder:
Premises:
- Big Apple SE Ltd
The Big Apple
Beach Road
Eastbourne
- Reasons for Hearing: Relevant representations received from responsible authorities and interested parties under the public nuisance, public safety and crime and disorder licensing objectives.
- Parties in attendance: Mr G Fitzpatrick (Enterprise Inns) and Mrs C Johnson (Legal Advisor, Gosschalks Solicitors).
- Responsible Authorities - Environmental Health Eastbourne Borough Council Noise Team - Mr A Albon
Interested Parties – Mrs J Hitchen and Mrs K Briggs.
- Licensing Authority:
Miss K Plympton (Council Licensing Manager) and Mr G Johnson (Council Regulatory and Litigation Lawyer).
- Decision made:
- The premises licence is suspended for a period of one month in order that a new Designated Premises Supervisor, to be approved by Sussex Police, can conduct appropriate staff training and acquaint themselves with all the conditions on the premises licence.
 - Boxing or wrestling/live and recorded music, performances of dance and anything of a similar description/provision of facilities for making music and dancing shall be removed as licensing activities attached to the premises licence.
 - The outside decking area shall not be used for any licensable activities.
 - The requirement for at least one Security Industry Authority registered Door Supervisor to be employed on a Friday and Saturday night from 20.00 hours until closing and on any other specified nights as directed by Sussex Police shall remain as a condition on the licence.
- Conditions attached to the licence:
- i) Music played at the premises will be incidental background music only at all times. Background music is defined as music at a background level so as persons can have a conversation without raising their voice.
- Reasons for Decision: The Sub-Committee has reviewed the Premises Licence having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003,

the Council's Licensing Policy and the Licensing Objectives.

The Sub-Committee considered that sufficient evidence had been provided of breaches of the public nuisance and crime and disorder licensing objectives, repeated breaches of the premises licence conditions, alongside poor management control and supervision at the premises. Recognition was given, particularly the attempts taken by Environmental Health and Sussex Police to resolve the issue of unacceptable noise nuisance and lack of management control at the site. In order to address managerial and staff training shortfalls, Members decided to suspend the premises licence, to attach additional conditions to the licence, and responding to the offer by the applicants, sought to remove various forms of regulated entertainment from the premises licence to ensure that the licensing objectives were being promoted. Members felt that this was the only course available to them given the facts provided to them.

The Sub-Committee had particular regard to the history of noise problems caused by regulated entertainment, and use of the outside decking area at the premises. In addition the Sub Committee heard evidence of the serious breakdown of management control, the evidence submitted by Mrs Hitchen, Environmental Health (Noise) and Sussex Police regarding the poor operation of the premises.

Date of Decision: 7 September 2010

Date decision notice issued: 16 September 2010

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

RIGHT OF APPEAL

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant for the review, the holder of the premises licence and any other person who made relevant representations in relation to the application.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.