

## **Licensing Act Sub-Committee – Record of Hearing held on Wednesday, 1 October 2014 at 6.00 pm**

**Members:** Councillor Shuttleworth (Chairman) and Councillors Cooke and Ungar

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**1 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests under the Code of Conduct.**

None were declared.

**2 Variation of a Premises Licence - Galleria Ristorante, 117-119 Seaside Road.**

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

The Senior Specialist Advisor outlined the report regarding the application to vary a premises licence for Galleria Ristorante, 117-119 Seaside Road, Eastbourne.

When submitting an application for a variation to a premises licence, the applicant is required to describe any steps they intend to take to promote the four licensing objectives, defined by the Licensing Act 2003. Steps detailed by the applicant were included at Appendix 1 of the report. The Committee was advised that no new plan of the premises had been submitted by the applicant. A copy of the current plan was included at Appendix 2 of the report.

The premises were located in the Cumulative Impact Zone, defined as where a significant number of licensed premises are concentrated in an area. When an area becomes saturated it creates exceptional problems that undermine the promotion of one or more of the licensing objectives. When valid representations are received in respect of a premises located within the area identified as being subject to the Council's Cumulative Impact Policy, a rebuttable presumption is created that the application will be refused. It is for the applicant to address the Cumulative Impact Policy and produce evidence that the application would not add to the cumulative impact caused by the licensed premises and challenges already experienced in the area or otherwise undermine the promotion of the licensing objectives.

Representations had been received from two members of the public, Mr Mitchell and Mr Guest, opposing the application. The concerns centred on the prevention of public nuisance (noise) licensing objective. Representations had also been received from Sussex Police, Eastbourne Borough Council's

Licensing Team and Health and Environment Team as responsible authorities. Copies of these representations were included at Appendix 3 of the report.

The Sub-Committee was advised that a late representation had been received from East Sussex Fire and Rescue Services. It was considered as a preliminary matter whether to take this representation into account in the capacity of responsible authority. The Sub-Committee exercised its discretion and agreed to take the representation into account when reaching its decision as they took the view that it would likely be relevant to the question of the likely effect of granting the licence on the four licensing objectives.

A copy of the planning conditions attached to the premises had been included at Appendix 4 of the report. The Senior Specialist Advisor highlighted certain points of the planning conditions to the Sub-Committee including that the premises should be used as a restaurant and for no other purpose, any use authorised should take place between 8:00am – 11:00pm and details of sound insulation should be submitted to and be approved by the Local Planning Authority before commencement of the activity. However the planning situation at the premises fell outside the remit of the Sub-Committee and therefore members considered only the licensing aspects of the application.

Mr Elton, Barrister representing Sussex Police addressed the Sub-Committee objecting to the application. He stated that there was no evidence provided in the applicant's operating schedule for the various activities and hours sought to rebut the presumption of refusal, arising from the Cumulative Impact Policy.

Mr Elton referenced Section P of the application where the applicant described steps taken to promote the four licensing objectives. The applicant had stated that the premises would use CCTV cameras but Mr Elton added that there was no detail about how they would be deployed and positioned. There was also nothing in the application to address the segregation of patrons from the premises and the nearby pub The Nuthouse and how customers would disperse from the premises.

Mr Elton referenced the planning conditions attached to the premises, notably that the premises should be used as a restaurant and for no other purpose. He believed that the hours and activity sought was inappropriate for a building with residential occupation, especially one with history of disturbance issues.

Mr Elton continued that the applicant had not shown how to minimise the effect of a bar or nightclub operating at the premises. Studies had shown a direct correlation between alcohol sold and an increase in music volume at a bar. A nightclub operating on the premises would cause disturbance to the area as typically music was played at a higher volume. The building historically amplified sound upwards and this would directly affect around 74 residential properties. An increase in music volume and quantity of patrons at the premises, potentially 7 days a week from 10:00 hours-05:00 hours could lead to angered residents living in the properties above and this represented a potential public nuisance and crime and disorder

issue. He reiterated that no evidence, rebuttable or otherwise was provided in the application to address the concerns that had been raised.

Councillor Ungar enquired of Sussex Police whether problems had been encountered at the Nuthouse when people were leaving the premises. Mrs Wolfe, representing Sussex Police advised that although there were no issues on a regular basis, when problems did occur, they would normally escalate dramatically.

Mr Zemouria responded by advising that he owned a restaurant on Carlisle Road, near a pub notable for incidents and he had encountered no problems. He stated that the premises was not a nightclub targeted at the younger generation and instead offered customers who had finished their meals at the restaurant an opportunity to stay for a period afterwards.

Mr Albon, Specialist Advisor (Pollution and Licensing), addressed the Sub-Committee on behalf of the Licensing Authority in the capacity of Responsible Authority. He stated that the applicant had not provided enough evidence to rebut the presumption against granting the application, arising from the Cumulative Impact Policy.

Mr Albon then addressed the Sub-Committee on behalf of the Health and Environment Team relating to noise and pollution. He stated that the premises was located below residential properties and historically there had been noise issues from any amplified music or live music being played. This was as a result of the concrete structure transferring sound around the whole premises. The Sub-Committee was advised that three noise abatement notices had been issued in the area over an 8 year period as a result of these premises carrying out live amplified music, albeit not whilst the premises was under the control of the applicant. He concluded by stating that he did not believe any loud amplified music or live music could be played at the premises without it causing noise disturbance to the area.

Mr Maura, East Sussex Fire and Rescue Services addressed the Sub-Committee objecting to the application. He advised that Fire and Rescue Services provided a two page document around issues of fire safety and was part of the application pack sent out by the Licensing Authority to applicants. Mr Maura raised concerns that the seven areas contained in the document had not been addressed or completed by the applicant. Mr Maura identified two public safety concerns that had not been addressed by the applicant which were overcrowding on the premises and the fire alarm system installed.

Mr Maura added that when he had previously followed up a complaint at the premises 3-4 months ago when under the previous tenant, he was accosted by three separate individuals over noise disturbance in the area. Mr Maura stated that the premises did have a complex fire alarm system and in the event of an alarm going off, the whole building would be evacuated. Mr Maura stated that if the alarm system was unnecessarily set off on a regular basis, a resident may be reluctant to evacuate each time. This could potentially become a public safety issue in the event of a real fire.

Mrs Wolfe added that there had been four calls of complaint in quick succession under the previous owner relating to noise and due to the fact

that the fire alarm had been set off three times, although it was acknowledged that this could not be attributed to the applicant.

Councillor Shuttleworth made reference to the two representations received from members of the public that would be included as part of their deliberations. He reiterated the issue of the various omissions from the applicant's application, notably the lack of conditions suggested, fire safety evidence and suitability of the building.

Mr Zemouria responded by giving the Sub-Committee an overview of the premises. He advised that he was aiming to operate a jazz club and target an audience of mature individuals. The variation sought would allow for customers to stay for a drink after they had finished their meal at the restaurant. He assured the Sub-Committee that the music played would not cause any disturbance to the area.

Mr Zemouria also advised that he would agree to any conditions deemed necessary to promote the four licensing objectives and would work with responsible authorities when required. He apologised that he had not provided detailed information on his application and added that he wanted to be part of the community in the area.

Mr Muir, Manager of the Colonnades addressed the Sub-Committee and gave an overview of the fire system installed at the premises and how it operated. Once a fire alarm was activated, a fire marshal would disable the alarm, whilst another would investigate the cause and follow up further if necessary. He added that the previous owner had caused problems in the area and on occasions Mr Muir had been required to intervene.

Mr Muir added that the frequency of live music would be restricted to special events and occur once or twice a month. Mr Zemouria reiterated that the premises would not be a nightclub and any music played would predominantly be jazz.

Mr Muir clarified that any live music would be played in the basement, allowing for an extra level between the premises and the residential properties. Mr Albon responded that he was aware that the basement would be used for the live music and reiterated that noise issues would still occur.

Councillor Ungar asked Mr Zemouria whether current customers from the premises had requested for the activities sought in the application to be introduced. Mr Zemouria responded that he had provided jazz entertainment at his premises in Carlisle Road and would like to attract those customers to Galleria Ristorante.

Councillor Cooke enquired whether there had been a failure during the application process which had resulted in a lack of information submitted by the applicant, as Mr Zemouria had demonstrated he would be willing to co-operate with the responsible authorities. Mr Zemouria confirmed that he had received advice throughout but had misunderstood the level of detail required, although he was willing to take such steps as were considered necessary.

Mr Maura responded that it was not up to the Fire and Rescue Services to complete the information for the applicant. He advised that the guidance document provided with the application pack offered assistance over how to carry out a fire risk assessment and address fire safety.

Mr Elton added that Sussex Police gave advice to the applicant throughout the process. Mrs Wolfe attended a meeting with Mr Zemouria and advised him that he could proceed with the current application as presented, abandon it or consult legal advice over the application. Mr Zemouria had confirmed he wished to proceed with the application.

Mr Elton queried the plans submitted with the application and Mr Zemouria confirmed that they did not reflect the new layout of the premises. Councillor Shuttleworth stated it was unfortunate that there had been a lack of clarity over the plans submitted and that this could lead to misinterpretation.

Mr Elton addressed the application submitted and the hours sought of 10:00 – 05:00 hours. Mr Zemouria had previously stated he wanted to offer customers who had finished their meal at his restaurant an opportunity to stay for another drink. Mr Elton stated that it would be unusual for a customer to finish their meal at 04.00 hours and suggested the hours sought represented an intention to turn the premises from a restaurant to a different enterprise entirely. Mr Zemouria responded that his premises would not become a night club and assured that if customers were not using the basement, he would close the premises early.

Councillor Shuttleworth suggested that the intentions highlighted by Mr Zemouria did not correlate with the application submitted. He added that a lot of information had been omitted and the Sub-Committee took as its starting point the presumption of refusing the application as a result of the Cumulative Impact Policy unless the applicant provided sufficient evidence to address the concerns raised.

Mr Elton added that although it had been stated that the frequency of live music played at the premises would not be a regular occurrence, the application sought for Monday – Sunday, 10:00 – 05:00 hours and if granted would allow for live music to be played regularly. He also referenced Section E of the application and advised the Sub-Committee that the applicant intended to play live music during the week and use a DJ at the weekend. Councillor Shuttleworth reiterated that there appeared to be a conflict between the application submitted and the verbal representation made by Mr Zemouria.

Following all the evidence presented to the Sub-Committee, Mr Albon concluded by reiterating his opinion that any live or amplified music including jazz, played at the premises would cause noise and disturbance to the area.

Mr Zemouria advised that he had nothing further to add to his representation.

Ms Simpson, Lawyer to the Council drew the Sub-Committee's attention to the relevant paragraphs in the Council's Cumulative Impact Policy which concerned the decision-making process to be applied given the fact that the premises lay within the cumulative impact zone. She reiterated that a rebuttable presumption was created that the application be refused, and

noted paragraph 8.35 of the guidance issued under section 182 of the Licensing Act which outlined the expectation that applicants include positive proposals in their applications regarding how they would manage any potential risks. Where a cumulative impact policy was in place, applicants were expected to demonstrate an understanding of how the policy impacts on their application, any measures they plan to take to mitigate the impact and why they consider the application should be granted as an exception to the policy. It was for the applicant to acknowledge and address the Cumulative Impact Policy and produce evidence that the application would not add to the cumulative impact caused by the licensed premises, challenges already experienced in the area or undermine the promotion of the licensing objectives.

The Sub-Committee then retired to consider and determine the application, having regard to the representations submitted, the four licensing objectives, guidance under Section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy and Cumulative Impact Policy.

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

**RESOLVED:** That the variation to a premises licence application in respect of Galleria Ristorante be refused as set out in the attached appendix.

The meeting closed at 7.29 pm

**Councillor Shuttleworth**  
**(Chairman)**