

Licensing Sub-Committee

03 October 2019



Title	Application for a Premises Licence at Unit 5 Thames Edge Court, Clarence Street, Staines-upon-Thames TW18 4BU		
Purpose of the report	For determination		
Report of	Deputy Chief Executive	Ward	Staines
Contact	Rob Thomas, Principal Licensing Officer (PLO), 01784 446439		

Description and Location	<p>Unit 5 is part of a residential and commercial complex. There are four commercial units located on the ground floor and basement levels and the rest of the building comprises three floors of residential apartments.</p> <p>One of the other commercial units currently operates as a restaurant and one is a bar/restaurant.</p> <p>A location plan of the premises is attached as Appendix A.</p>
The Application	<p>The application is to permit:</p> <ul style="list-style-type: none">• Sale of alcohol and provision of films 10:30-23:00 Sunday-Thursday; 10:30-01:00 Fridays and Saturdays• Live and recorded music 23:00-01:00 Fridays and Saturdays• Late night refreshment 23:00-01:00 Fridays and Saturdays <p>The opening hours of the premises are noted as being half an hour later than the cessation for sale of alcohol as noted above. Whilst the application originally sought for seasonal variations to permit the premises to remain open until 05:30 over New Years Eve/Day and all other Public Holidays; this has since been amended to 03:00 solely on New Years Eve/Day (i.e. opening hours will be as normal on other Public Holidays, dependent on which day of the week the holiday lands).</p> <p>The application form is attached in full at Appendix B.</p>
Representations	<p>Relevant representations have been received from Environmental Health Regulatory Officer, Louise McVey (Appendix C).</p> <p>34 relevant representations have been received from other persons living nearby and are attached at Appendix D.</p>

Options	<ol style="list-style-type: none">1. The Sub-Committee is requested to consider the application for the grant of a premises licence on its merits.2. Having had regard to the representations, the Sub-Committee must decide on one or more of the following options as it considers appropriate for the promotion of the licensing objectives:<ul style="list-style-type: none">• To grant the application subject only to such conditions as are consistent with the operating schedule and the mandatory conditions; or• To grant the application and modify the conditions of the licence, by alteration, addition or omission; or• To exclude from the scope of the licence any of the licensable activities to which the application relates; or• To refuse to specify a person in the licence as the premises supervisor; or• To reject the whole or part of the application.
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1. Premises history

- 1.1 The premises has historically operated as several different businesses (Coco's, Kandi Klub, Diablos and Diesel), as a "nightclub".
- 1.2 In its most recent incarnation (as Soirée), it was run – according to the previous licence holder – as a "bar/restaurant". However, it would be fair to say that the operation changed over time into something which more closely resembled a business most people would regard as a "nightclub".
- 1.3 Over the years, when the premises has been open the Council and other responsible authorities have consistently received complaints in relation to the premises, commonly:
 - drunk and disorderly behaviour including shouting, swearing and fighting;
 - noise disturbance from regulated entertainment within the premises, from smokers in the alleyway adjacent to the premises and people arriving and leaving the premises;
 - anti-social behaviour;
 - lewd behaviour;
 - criminal damage to the property of residents;
 - cigarette smoke smells;
 - litter;
 - vehicles parking dangerously in Clarence Street, on the pavement and blocking access with a view to dropping off and picking customers up; and
 - the premises not being fit for use as a nightclub due to its close proximity to residential properties.
- 1.4 Whilst these complaints were received in response to operations run by former licence holders, it is important to note that in a decision notice issued to Holaw (431) Ltd. in January 2010 with respect to an application for a Premises Licence at the address, the Sub-Committee was persuaded by the evidence that these premises are not suitable for use as a nightclub and are not suitable for any form of regulated entertainment without the imposition of conditions to ensure that noise does not cause a disturbance to residents.

2. Application Summary

- 2.1 An application was received for a Premises Licence on 15 August 2019.
- 2.2 Consultation notices were displayed in accordance with the Licensing Act 2003, at the premises itself and in the 23 August 2019 edition of the Chronicle & Informer.
- 2.3 The application in its entirety was also available for inspection via Spelthorne Borough Council's Licensing Online system, for the duration of the 28-day consultation period.
- 2.4 On 28 August 2019, representatives from Spelthorne's Licensing and Environmental Health department met with the applicants and their agent at the address.

- 2.5 Officers at the meeting were keen to divert the applicant's attention to the history of the premises and the problems associated with it. A focus was placed on the problems with noise and the issues with the structure which exacerbated them. With this in mind, the Licensing department stressed to the applicant how contentious the application was likely to be and that it was likely to draw representations and subsequently be determined by a Licensing Sub-Committee.
- 2.6 The applicants were urged to consider acquiring a report from an acoustic consultant, but were reluctant to fund the full amount to do so without any guarantee that a Premises Licence would be granted. Their agent advised that they would be happy to agree to a condition which specified this would need to be carried out and ratified by the Council's Environmental Health department prior to the premises opening.

3. Promotion of the Licensing Objectives

- 3.1 The Licensing Objectives, together with examples from Government Guidance, are set out below for information:

Prevention of crime and disorder

- Criminal behaviour on, or directly attributable to, the premises
- Under age sales
- Anti-social behaviour on, or directly attributable to, the premises

Public safety

- Overcrowding
- Fire safety
- Emergency exits
- Anything related to the safety of the public at the premises

Prevention of public nuisance

- Noise / light or odour nuisance
- Litter

Protection of children from harm

- In relation to sales of alcohol, the most relevant issue under this licensing objective is the prevention of sales of alcohol to under 18s

- 3.2 Section 18 of the application form (hereafter known as the 'Operating Schedule) at **Appendix B**, details the proposed steps to be taken to promote the licensing objectives.
- 3.3 Following extensive liaison between the applicant, Spelthorne's Licensing department, Surrey Police and Surrey County Council's Child Employment; a revised version of the Operating Schedule (attached as **Appendix E**) has been agreed.
- 3.4 Should the licence be granted, the points on this version of the Operating Schedule will be converted into enforceable conditions which will be attached to the licence to ensure the promotion of the licensing objectives.

4. Representations

i) Representations from Responsible Authorities

- 4.1 A relevant representation has been received from Spelthorne Borough Council's Environmental Health Regulatory Officer, Louise McVey and is attached as **Appendix C**. It is based on the prevention of public nuisance – specifically with reference to noise. Mrs McVey refers in detail to the historical issues with noise emanating from the premises, and explains measures that need to be taken in order to resolve the likelihood of recurrence if any form of regulated entertainment is to resume at the address.

ii) Representations from 'other persons'

- 4.2 In total, 34 relevant representations have been received from other persons and are attached at **Appendix D**.
- 4.3 The grounds for objection are summarised below in relation to each Licensing Objective.

Prevention of crime and disorder

- Drug-taking and selling
- Anti-social behaviour, including fighting amongst customers, intimidation of passers-by, trespassing and criminal damage
- Public urination
- Lewd behaviour
- Security concerns regarding access to the building via the underground parking lot

Public safety

- Potential for drunk people to fall into river
- Cars stopping to drop off / collect customers have no alternative but to stop in an unsafe manner on Clarence Street, due to the location of the premises
- Bottles, glasses and consequent broken glass outside
- Vomit outside
- Residents could be subject to frequent inhalation of cigarette fumes

Prevention of public nuisance

- Noise from music, customers smoking and leaving the premises, and cars collecting them respectively
 - Increase in the number of cars (both taxis and private) parking inappropriately / dangerously
 - Congregating smokers will cause noise and pollution
 - Increased litter and cigarette stubs
- 4.4 Issues which are not relevant to the licensing objectives and cannot be taken into account by a Licensing Sub-Committee:
- Objections on the basis of need, or lack of need, for premises to sell alcohol

- Parking, or other issues relating to general amenity rather than licensing objectives
- Morality
- Property values and acquisition

5. Planning permissions

- 5.1 Spelthorne's Planning department confirmed that the most recent Planning usage permission allowed use of this premises as a bar/restaurant.
- 5.2 The current Planning usage permission does **not** permit the premises to be used as a "nightclub" and anyone wishing to use it for this purpose would need to consult with the Planning department before doing so. Failure to do so may result in enforcement action.

6. Licensing Policy

- 6.1 The following sections of the Council's Licensing Policy are relevant.
- Section 25.0 - Crime and Disorder
 - Section 25.5 – Public Safety
 - Section 25.7 - Public Nuisance

7. National Guidance

- 7.1 The relevant section of the National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 on determining Premises Licence applications is relevant in the consideration of this application, and is attached at **Appendix F**.

8. Making a decision

- 8.1 In making its decision the Sub-Committee must promote the licensing objectives only, taking into account National Guidance and Spelthorne's Statement of Licensing Policy.
- 8.2 The Sub-Committee must give reasons for its decision.
- 8.3 It is only where additional and supplementary measures are appropriate to promote the licensing objectives that there will be a requirement for appropriate, proportionate conditions to be attached.
- 8.4 Conditions on licences must:
- be precise and enforceable;
 - be unambiguous;
 - not duplicate other statutory provisions;
 - be clear in what they intend to achieve; and,
 - be appropriate, proportionate and justifiable.
- 8.5 It is important in considering the promotion of the licensing objective on prevention of public nuisance, that the Sub-Committee focuses on any

disproportionate or unreasonable effect the licensable activities at the premises, have on persons living and working in the area around the premises.

- 8.6 In determining the application, the Sub-Committee will need to consider whether there is actual evidence of problems in relation to the licensing objectives at this premises. Where the representations are unable to provide evidence of observed problems, as in the case of a new licence application, the Sub-Committee should be convinced that there is a very real threat of the fears or the dangers described in the representations actually occurring, before applying any conditions to address such fears or dangers.

Appendices:

Appendix A – Location Plan

Appendix B – Application

Appendix C – Representation from Spelthorne Borough Council's Environmental Health department

Appendix D - Representations from other persons

Appendix E – Revised Operating Schedule submitted by applicant on 21 February 2018

Appendix F – Section 9 of the National Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003, on Determining Premises Licence Applications