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Our ref: GS/Sens
Date: 9 October 2019

SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.52

Date of Licensing Sub-Committee: 3 October 2019

Applicant: Sensations Leisure Ltd

In respect of Premises: Unit 5
Thames Edge Court
Staines upon Thames
TW18 4BU

Respondent: Sensations Leisure Ltd

DECISION

Refused to grant

REASONS FOR DECISION

1. This Sub-Committee has before it an application for a Premises Licence by Sensations Leisure Ltd, at Unit 5, Thames Edge Court in Staines upon Thames. Staines.

ATTENDANCE

2. A number of people attended the Sub-Committee hearing to make representations. They were:
 - a. Mr. Rob Thomas, Principal Licensing Officer, Spelthorne Borough Council;
 - b. Mrs. Lucy Catlyn, Licensing Enforcement Officer, Spelthorne Borough Council;
 - c. Mrs. Louise McVey, Environmental Health Regulatory Officer, Spelthorne Borough Council, a responsible authority;
 - d. Mr Stewart Gibson, Agent for the applicant
 - e. Mr Clive Parsons and Mr Surinder Garcha, directors of Sensations Leisure Ltd
 - f. Mr John de Pear, Representee
 - g. Ms Kathy Morton, Representee
 - h. Mr Jonathan Smerin, Representee

BACKGROUND

3. Unit 5 is part of a residential and commercial complex. There are four commercial units on the ground/basement levels and the rest of the building comprises three floors of residential apartments. Two of the other commercial units operate as restaurants and the remaining one as a bar/restaurant.
4. The premises has historically operated as several different businesses (Coco's, Kandi Klub, Diablos and Diesel), as a "nightclub".
5. In its most recent incarnation (as Soirée), it was run – according to the previous licence holder – as a "bar/restaurant". However, the operation changed over time into something which more closely resembled a business most people would regard as a "nightclub".
6. 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.
7. On 28 August 2019, representatives from Spelthorne Borough Council's Licensing and Environmental Health department met with the applicants and their agent at the address. At this meeting Council officers drew the applicant's attention to the history of the premises and the problems associated with it, particularly in relation to noise and the issues with the structure which exacerbated this.
 8. The applicant was urged to consider obtaining a full report from an acoustic consultant but was reluctant to do so without any guarantee that a Premises Licence would be granted. The applicant's agent advised that the applicant would be happy to agree to a condition which required a report from an acoustic consultant to be obtained and ratified by the Council's Environmental Health department prior to the premises opening.
 9. The Operating Schedule submitted with the application details the proposed steps to be taken to promote the licensing objectives. The Licensing Enforcement Officer stated that the conditions on this amended Schedule were more extensive and enforceable.
 10. Following extensive liaison between the applicant, Spelthorne's Licensing department, Surrey Police, Environmental Health and Surrey County Council's Child Employment and Strategy department, additional conditions were agreed and included on a revised Operating Schedule which was circulated as Appendix E.
 11. Prior to the hearing the applicant amended the hours applied for with respect to non-standard timings. In respect of the following licensable activities, application was made for non-standard times on New Year's Eve from 23.00 until 03.00:
 - Sale of alcohol by retail.
 - Late Night Refreshment.
 - Provision of recorded music.
 - Provision of live music.
 - Provision of films.

The application for extended hours on public holidays was withdrawn.

EVIDENCE

12. The Licensing Sub-Committee has considered all of the relevant evidence made available to it, and in doing so has taken into account the regulations and national guidance under the Licensing Act 2003 and Spelthorne Borough Council's Statement of Licensing Policy.

13. The following evidence was provided at the hearing:

Applicant

14. The applicant's agent, Mr Gibson, advised that the applicant wished to amend the application in relation to regulated entertainment. The application for live music was withdrawn completely; the application for films was amended to Fridays and Saturdays only from 8.30pm to 1am.
15. Mr Gibson outlined the application, as amended, and explained the use of the premises:
16. From Sunday to Thursday, the applicant would operate a standard bar on the ground floor with background music only. Licensable activities would cease at 11pm and everyone would be out of the premises by 11.30pm. He stated that the bar would be decorated in a luxurious manner and aimed at 'high end' customers.
17. On Fridays and Saturdays, the premises would be used to host private adult parties and corporate functions in the basement area. Background music would be played during the private parties but the application included recorded music after 11pm to give the applicant the flexibility to offer a DJ for corporate functions. Such events would not occur every Friday and Saturday night.
18. Mr Gibson explained that 'private adult parties' did not mean events such as birthday or other celebratory parties. The 'parties' were opportunities for "adults, mainly couples, to meet in a safe manner to socialise and have fun in an adult way, knowing they were in a protected environment to enjoy themselves and make memories". People did not attend these events for the purpose of drinking but to meet like minded individuals.
19. Mr Parsons stated that both he and Mr Garcha had 12 years' experience in this industry and other than one non-police related incident had not experienced any other problems related to the consumption of alcohol. The Designated Premises Supervisor (DPS), Sadie Heath, was not able to attend the hearing as she had arranged a holiday before the hearing date was set. Mr Parsons stated that she had experience of running a bar in local hotels and pubs. The Police had not raised an objection to her appointment as DPS.
20. Admittance to the private adult parties would be restricted to vetted members of a club who had pre-booked to attend any event; there would be no general public admittance. Members are not permitted to sign in 'guests'. Events would not be advertised on the premises but only through social media channels, specific to the type of adult entertainment on offer. Any member who caused trouble would be ejected from the premises, ensuring that a taxi was taking them to their home address, and their membership of the club removed.
21. Mr Parsons explained the vetting process for membership to the private club, which involved applicants for membership requesting to join through specialised websites and then being sent a link to Sensations Leisure Ltd's web address. The applicant is asked to send their details with a recent photo. The Company then invites the applicant to attend the Premises with two forms of ID, such as a

passport or driving licence and utility bill that staff check with the person seated in front of them and the submitted photo on their screens. They are given a 12 month membership but if they play up or cause any problems their membership will not be renewed.

22. Mr Parsons confirmed that staff had been trained in recognising forged documents. He also explained the measures the Premises would have in place to deal with Modern Slavery through use of the 'Go Ask Alice' posters in the ladies' toilets.
23. Mr Gibson confirmed that the Company would engage sufficient Door Staff on the basis of a risk assessment of the number of people who have booked to attend a party. Door Staff would ensure compliance with the condition on checks of ID and not permit entry by general members of the public. They would monitor the numbers of people entering the Premises to ensure they did not exceed the stated capacity. Although the Operating Schedule included a condition that 'No more than 10 persons will be allowed to queue outside waiting to enter the premises and this queue will be monitored by the door supervisor.' Mr Gibson stated that people did not queue at these sorts of venues. There would be a lobby inside the Premises where people could wait to be vetted.
24. In response to concerns expressed by residents that another premises near to the existing Slug and Lettuce would cause nuisance from people standing around waiting for taxis late in the evening, Mr Gibson stated that following the applicant's discussions with the Police they had given an undertaking that at the conclusion of events, no-one would be permitted to wait for taxis outside but they would be held inside the premises and only go out when their taxi arrived.
25. Mr Gibson stressed that the premises did not intend to operate as a nightclub and in any case, a planning condition prevented it from doing so. Nevertheless, the applicant was happy to accept the condition proposed by Environmental Health that "The premises shall not be used at any time for the activity of a nightclub or similar activity".
26. He stated the applicant was also happy to agree to all the Environmental Health conditions, with the exception of the one relating to the smoking shelter, to ensure the licensable activities did not cause a noise nuisance to residents in the Thames Edge development. He said if the licence was granted that the applicant was happy to spend a lot of money to sort out the venue: they would obtain an acoustic report, carry out the works required by such a report and obtain Environmental Health sign-off for the works before they started operating any licensable activities. He said that granting this application would be good for the residents as the Company will make the premises noise safe so the residents would not even notice its operation. However, they did not wish to obtain an acoustic report before the licence was granted as it would be an expensive undertaking.
27. Mr Gibson said the applicant was happy to accept the Police condition, which had been agreed by the applicant prior to the hearing, to restrict the smoking area to a maximum of 10 persons at any one time. However, he felt that

restricting to a lesser number, as requested by the Environmental Health suggested condition, was more likely to cause problems.

28. Mr Gibson addressed each of the objections from residents set out at pages 11 and 12 of the Sub-Committee report and explained how the application would not compromise the promotion of the Licensing Objectives:
29. During summing up, Mr Gibson confirmed further conditions that the applicant was happy to add to the Operating Schedule which included: Pubwatch; use of town radio system; written records of corporate bookings, including a register of names of those attending, held at the venue for 12 months. He was also happy to agree to a limit on the frequency of such bookings.

Responsible Authorities - Environmental Health

30. Louise McVey, Environmental Health Regulatory Officer for Spelthorne Borough Council made representations in writing and in person at the hearing based on the prevention of public nuisance – specifically with reference to noise. Mrs. McVey referred in detail to the historical issues in relation to noise emanating from the premises.
31. Mrs McVey recommended that the Sub-Committee refuse to grant the licence as due to a lack of sound insulation in the Premises, there would be unacceptable disturbance to residents from licensable activities involving recorded music. She recommended that all Environmental Health concerns were fully resolved and noise control and acoustic works completed, sound tested and passed by Environmental Health at Spelthorne Borough Council before a licence was granted, or any licence granted comes into operation. This was to ensure that residents were not disturbed by music or other noise coming from within the premises.
32. She confirmed that no works had been undertaken at the Premises to the knowledge of Environmental Health, since the abatement notice was served on Holaw (431) Ltd, the current leaseholders, in 2007. She was unable to comment on what works would be required to ensure that noise from amplified music and sound is inaudible in the residential properties at Thames Edge Court, at all times, as per her recommendation, until an acoustic survey had been carried out.
33. She referred to the conditions she would wish to see attached to any licence granted, which were set out in Appendix C to the report. The purpose of these conditions was to prevent public nuisance by reducing the impact on nearby residential premises from the activities going on at the premises.

Other Parties

34. 34 relevant representations were received from other persons opposing the granting of the Licence, all of whom lived in the vicinity of the premises.
35. The grounds for objection in relation to each Licensing Objective were:

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

36. Three people who had made written representation gave evidence at the hearing. These were Mr John de Pear, Ms Kathy Morton and Mr Jonathan Smerin.
37. Mr de Pear expressed his concerns about the operation of the Premises and reiterated that this was not a suitable area for a nightclub. He referred to the previous Sub Committee decision in January 2010 which found that the Premises was not suitable for use as a nightclub, disco or similar late-night operation involving public dancing and entertainment. He spoke about the problems residents continue to experience as a result of the behaviour of patrons of the Slug and Lettuce. He believed this premises would add to the existing noise residents suffered from people outside the premises and walking past their homes to collect cars from the car park along towpath.

Ms Morton outlined her concerns about how the previous occupier of this Premises operated and the problems it brought for residents. She explained how residents already had to deal with the noise from the Slug and Lettuce, and their fear that this premises would double the number of people standing around outside. She was also fearful that people would attend the Premises from outside the area just to cause trouble. She raised concerns about the use of a smoking shelter which would be located just below her flat.

Mr Smerin stated it was obvious that this Premises would add to the problems residents already experienced as it is a late night alcohol venue. He described how it was not safe to go out of their homes after 11pm but it was a pleasant location during the daytime. He stated that the concierge at Thames Edge had to sweep up litter, bottles, broken glasses, cigarette ends every morning. He said this was not a suitable venue for DJ music.

FINDINGS

The Sub-Committee considers the Licensing Objectives in turn:

Protection of Children from harm

38. The Sub-Committee finds that no relevant representation had been received. It is not necessary for the Sub-Committee to consider this further.

Crime and Disorder

39. The Sub-Committee takes into consideration that no relevant representation had been received by the Police as there had been adequate and appropriate negotiations with the Police prior to the hearing.
40. The Sub-Committee were persuaded by the Applicant's evidence that proportionate measures would be in place to prevent customers from lingering outside of the premises, including the marshalling of customers leaving the venue to facilitate prompt dispersal. There would be a prohibition of bottles and glasses being removed from the venue.
41. The Sub-Committee recognised that as this is a new licence application the representations were unable to provide evidence of observed problems. The Sub-Committee was not persuaded that there is a very real threat of the fears or the dangers described in the representations actually occurring.
42. The Sub-Committee noted National Guidance which states that behaviour of customers beyond the immediate area surrounding the premises is a matter for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right.
43. The Sub-Committee finds that there was no evidence to suggest that this premises would cause any incidents of crime and disorder.

Public Safety

44. The Sub-Committee finds that the representations made by the interested parties which were focussed on public safety would not relate to incidents from this venue, and were satisfied in terms of the Applicant's promotion of public safety within the premises.

Prevention of Public Nuisance

45. The Sub-Committee were persuaded that the proposals for management of entry and egress from the premises would ensure the licensing objective on public nuisance would be adequately promoted.
46. The Sub-Committee notes National Guidance which states that behaviour of customers beyond the immediate area surrounding the premises is a matter for the personal responsibility of individuals under the law.
47. The Sub-Committee accepts the relevant representation of the Environmental Health officer in respect of smoking and finds it to be a proportionate measure when taking into account the proposed licensable activities.
48. The Sub-Committee were persuaded that due to the history of the premises and on the evidence of previous Sub-Committee decisions that the premises are not fit for purpose as a private members club or party venue. This is because the premises has a lack of sound insulation which results in unacceptable disturbance emanating from the premises.
49. The Sub-Committee took into account the strong objection of the Environmental Health officer as the Responsible Authority and the oral confirmation that given the long standing history in respect of noise complaints emanating from the premises, no remedial work of any sort had been undertaken at the premises.
50. The Sub-Committee notes that of the three options offered by the Responsible Authority, the first two were to refuse the application and conditions were only suggested as a fall-back position in the event that the Sub-Committee were minded to grant the application.
51. When considering the conditions submitted by Environmental Health to promote the prevention of public nuisance objective in relation to noise, as agreed by the applicant, the Sub-Committee having regard to statutory guidance, finds that any conditions should be appropriate and tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate and disproportionate measures and in the absence of an acoustic report and the Responsible Authorities recommendation that the premises are not fit for purpose, the Sub-Committee does not have the evidence to persuade it that any conditions it may impose in this regard would be appropriate and proportionate.

DECISION

52. The view of the Sub-Committee is that the application be refused.

RIGHT TO APPEAL

53. You have a right to appeal against this decision, which must be made to a Magistrates court within 21 days of receipt of this decision notice. The Magistrates Court for the administrative area of Surrey is Guildford Magistrates Court.

Cllr R.W. Sider - Chairman

Cllr C. Barratt

Cllr I. Beardsmore

Date of Determination: 3 October 2019

Date of Decision Notice: 9 October 2019