

**LICENSING SUB-COMMITTEE****22 November 2010**Attendance:

Councillors:

Jackson (Chairman) (P)

Mason (P)

Pearce (P)

Officers in Attendance:

Mr J Myall (Licensing and Registration Manager)

Mrs C Tetstall (Property and Licensing Solicitor)

Mrs A Toms (Environmental Health Officer)

Mr D Ingram (Head of Environmental Protection)

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1. **REVIEW OF PREMISES LICENCE – BAR 3 ONE, 31B THE SQUARE, WINCHESTER**

(Report [LR345](#) and addendums refers)

The Sub-Committee met to consider a review of the premises licence for Bar 3 One, Winchester.

The Chairman welcomed to the meeting PC Miller (Hampshire Constabulary, a responsible authority) and Mr Grimsey (Poppleston Allen Solicitors for the Premises Licence Holder) together with Mr Davies (Director and Designated Premises Supervisor, Bar 3 One), Mr K Collymore (Director, Bar 3 One) and Ms Symes (General Manager, Bar 3 One).

Mr Myall presented the application as set out in the Report. He advised Members that references to Public Nuisance on page 9 of the Report within the Conditions had been included by error and should be deleted.

In summary, he explained that the Police had called for a review of the premises licence for Bar 3 One, Winchester, relating to the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and public safety. During the consultation period of the Review, representations had been received from a number of interested parties (none of whom addressed the meeting) and from the Head of Environment, as set out in the Report.

Subsequent to the publication of the Report, further written submissions were accepted by the Sub-Committee for consideration, in accordance with the Licensing Act. These were addendums to Appendices 1 and 2 from the Police; and two addendums to Appendix 4 from the Licence Holder's representatives.

The Police recommended that the Designated Premises Supervisor (Mr Davies) be removed from the licence and that the terminal hours for the sale of alcohol be brought forward from 2.30am to no later than 1am.

PC Miller referred the Sub-Committee to Appendix 1 of the Report, which set out 50 pages of Police related incidents regarding Bar 3 One. During his explanation of these incidents, he requested that the incident set out on page 31 be retracted.

He considered that, since the Premises Licence Holder took over the running of the premises in 2005, the Police had received a disproportionate number of calls regarding the premises in comparison to other establishments in the town centre. Despite numerous visits by the Police, along with joint visits with the City Council and others, the venue remained the most problematic venue in the town.

PC Miller explained that he had visited Bar 3 One on 29 October 2010 with the Fire and Rescue Service, following concerns about the venue exceeding their capacity of 120 people on the first floor. PC Miller had found that the clicker system, which was the venue's only way of counting its capacity, was broken. His perception of the upstairs area was that it had completely exceeded its capacity, given that it was so busy that it was difficult to move around the room. Mr Davies later explained that the clickers had now been replaced and staff were placed on the stairs to help control the numbers entering the first floor area. Mrs Tetstall added that fire safety was dealt with by legislation other than the Licensing Act and was therefore not a relevant consideration for the Sub-Committee.

Pc Miller also explained that in the week prior to this meeting, the windows of the venue featured posters advertising "Six sambucas for £9", which may constitute the promotion of irresponsible drinking.

PC Miller stated that, in addition to the above concerns, he considered that the venue had been poorly managed, with the CCTV system often not working, or its recordings being overwritten in error. He explained that the Licence Holder had refused the Police's request to voluntarily reduce the hours to a maximum of 1am, although they had agreed to adopt an "over-25 years olds only" policy on Friday and Saturday evenings. The premises had also agreed to the Police's request to increase the number of door staff to six and Police had requested that the capacity for the entire establishment be reduced from 250 to 150.

The Sub-Committee then considered in turn each of the occurrences set out in the Police's submission.

Members noted that the Police had asked for hot food to be served on the premises but, following an unsuccessful trial, the applicant no longer offered this to customers. Mr Collymore added that this was an issue that they could re-consider with better advertising and a minor variation to the Licence.

The Sub-Committee noted that, in relation to one of the incidents in the Report, the Police had received no response to their request to inspect the

venue's public liability insurance. Mr Myall explained that, whilst having the appropriate insurances was advisable, it was not a licensing matter and was not therefore usually included as a condition. Mr Davies later confirmed that they held the appropriate insurances, but they had not received the Police's request.

Mrs Toms then addressed the Sub-Committee on the public nuisance aspect of the Review. She explained that two new residential apartments had been created at first floor level, adjacent to the premises. One of the occupants of these apartments had complained about the level of noise from the premises and, in response, Mrs Toms had met with the complainant and Bar 3 One. Following sound tests, the licensee had agreed to reduce the bass levels of the music. However, as this had not eased the situation for the complainant, Mrs Toms sought a more permanent solution through additional conditions on the licence. These related to the submission of an acoustic report (regarding sound insulation), a noise limiter and noise management plan. She added that the Licence Holder had, at the meeting, submitted an acoustic report, although she had not yet had any opportunity to consider its contents.

Mr Grimsey spoke in support of the Licence Holder. In summary, he highlighted that the Police record of events set out in Appendix 1 were based on what was reported, and had not been subject to any investigation. He suggested that many of the events could not be directly attributed to Bar 3 One, but were instead recorded as being in the area near the venue. He also highlighted the broad definition the Police used for "assault" and, in response to a question, PC Miller was unable to confirm how many of these incidents had resulted in charges being brought.

Mr Grimsey suggested that some of the incidents recorded by the Police may have come from aggrieved patrons who had been legitimately refused entry to the premises. In response to further comments, PC Miller confirmed that the Police had no issues with the conduct of the door staff employed at the premises.

Mr Grimsey also highlighted to Members that few of the complaints related to issues within the premises, that there were few recorded incidents of drug abuse or underage drinking. With reference to drugs abuse, PC Miller suggested that this could be a reflection of poor detection rates, rather than the absence of a drugs problem.

With regard to the reference to irresponsible promotions, Mr Grimsey suggested that the promotion had been agreed with PC Miller, although in questioning, PC Miller had no recollection of this.

Mr Davies spoke as the Designated Premises Supervisor. He explained that he had been working at Bar 3 One since 2006 and, since that time, the premises had successfully shaken off its reputation for underage drinking. He also explained that potentially irresponsible drink promotion posters had been removed (they had been instigated by a third party) and, following advice from the Police, the premises had been shut during a recent Stamina 7 Pub Crawl. He added that Bar 3 One was an active member of PubWatch and explained the arrangements for the queue, how they assessed patrons' drunkenness, the

re-entry policy, the staff report book, the CCTV system, the wind-down period, and the smoking area.

With the assistance of Mr Collymore, Mr Davies then clarified a number of the incidents reported to the Police as set out in the Report and Addendum 2 to Appendix 4.

In his concluding statement in support of the Licence Holder, Mr Grimsey conceded that errors had been made and that the Review had provided an opportunity to improve the management of the premises. He therefore recommended to the Sub-Committee a list of proposed conditions, as set out on page 24 of Appendix 4 Addendum 1. Mr Davies added that to reduce the hours to 1.00am could mean the potential failure of the business as it was aimed at late night customers. Therefore suggested the three month reduction in the hours by 30 minutes to 2.00am, after which the licence would revert back to 2.30am.

The Sub-Committee noted that Mrs Toms raised no objection to the Conditions proposed by the Licence Holder.

In summing up, PC Miller underlined the disproportionate drain the premises had had on Police resources and recommended his proposed Conditions as set out in Appendix 1 of the Report.

The Sub-Committee retired in camera to consider the application.

In her closing remarks, the Chairman stated that the Sub-Committee had carefully considered the application and the representations made. It had taken into account the duties under the Crime and Disorder Act 1998, and the rights set out in the Human Rights Act 1998.

The Sub-Committee agreed to vary the premises licence by amending the conditions proposed by the Licence Holder, as set out below.

#### REASON:

The amendments to these Conditions were imposed to address the concerns raised by the Police, the Head of Environmental Protection and the Interested Parties, in respect of furthering the Licensing Objectives that relate to the prevention of crime and disorder and public nuisance.

The Chairman also explained that the parties had 21 days in which to appeal against the Sub-Committee's decision to the Magistrates' Court.

#### RESOLVED:

That the application for a review of the premises licence be granted, subject to the following conditions:

1. The Designated Premises Supervisor, Lee Davies, attend and pass the National Certificate for Designated Premises Supervisors Course (NCDPS) within 3 months.

2. A Personal Licence Holder must be on the premises at all times whilst licensable activities are being provided.
3. All licensable activities to cease at 02.00 hours Thursday to Saturday nights, after three months the hours will revert to 02.30 hours.
4. Door staff at all times to use a clicker system or other system approved by the Police to ensure compliance with the capacity limit of the premises.
5. All door staff to be trained in the use of the clicker (or other) system, such training to be documented in writing and available to the Police and Local Authority upon request.
6. Door staff to be increased to six with at least three persons normally inside the premises.
7. All door staff must wear clearly identifiable reflective arm bands showing SIA identification.
8. Written records must be made on a daily basis of all incidents at the venue with details of the door staff involved. These records must be made available for inspection by the Police during normal operating hours.
9. A CCTV system must be installed and maintained to a standard agreed with by the Police within three months.
10. The system must be capable of producing evidential standard quality images with a minimum of six frames per second operating in normal conditions within the public areas.
11. All public areas must be covered by CCTV. This must include the front door and bar areas and must be capable of providing good quality head and shoulder images.
12. All images must be retained for 30 days and be made available to an authorized officer upon request.
13. There must always be a member of staff capable of operating the CCTV system whilst the premises are open for licensable activity.
14. Any images recovered must be in a format that can be readily taken away and viewed on any computer operating on any Windows-based program acceptable to the Police, or DVD player. This will be without the requirement for additional software to be installed.

15. The CCTV system must be operating at all times whilst the premises are open for licensable activity.
16. Records must be made and kept for inspection to show that the system is functioning correctly and that data is being securely retained.
17. There should be no entry or re-entry to the premises by any customer after 01.00 for the first three months (and 1.30 thereafter) on Thursday to Saturday nights inclusive, save for using the enclosed side yard for smokers.
18. No Regulated Entertainment consisting of amplified or live music shall be provided until a noise limiter is installed, calibrated and maintained to the written satisfaction of the Director of Operations. All amplification systems shall be routed through the noise limiter.
19. An acoustic report, prepared by a competent person, shall be obtained by the Premise's Licence Holder within 21 days and any remedial works proposed by that Report to be agreed, implemented and completed to the satisfaction of, and within a timeframe agreed by, the Local Authority.
20. A noise management plan shall be in place to ensure that there are suitable measures taken to prevent unreasonable disturbance to neighbours. The plan shall be approved in writing by the Local Authority and any proposed amendments by either party shall be agreed in writing by both parties.
21. Wind-down Period:
  - i) During the last 30 minutes of bar service, the points in each bar will be reduced and certain staff members re-allocated to collecting glasses or to offer service to assist customer departure from the premises.
  - ii) Volume levels, type and tempo of music played and gradual increase in lighting levels within the venue will be used to encourage the gradual dispersal of patrons during the last part of trading and during the drinking-up period.
  - iii) The premises shall use a dispersal procedure, amended from time to time in consultation with the Police (Appendix 4 Addendum 1 refers), to ensure the gradual dispersal of patrons at the end of the evening.
  - iv) DJ announcements may be used to encourage gradual dispersal and to remind customers of consideration for neighbours.
22. The premises shall maintain a Neighbours' Charter (Appendix 4 Addendum 1 refers).

2. **REVIEW OF PREMISES LICENCE – MIKIKI LOUNGE, BRIDGE STREET, WINCHESTER**  
(Report [LR344](#) and addendums refers)

The Sub-Committee met to consider a review of the premises licence for Mikiki Lounge, Bridge Street, Winchester.

The Chairman welcomed to the meeting Mr D Ingram (Head of Environmental Protection, Winchester City Council, a responsible authority), PC Miller (Hampshire Constabulary, a responsible authority) together with Mr K Collymore (Premises Licence Holder, Mikiki Lounge), Mr and Ms Gilbert (Mikiki Lounge) and Mr A Gardner (Enterprise Inns, the Freeholder of Mikiki Lounge).

Mr Myall presented the application as set out in the Report. In summary, he explained that the Head of Environmental Protection had applied for a review of the premises licence for Mikiki Lounge, Winchester, relating to the licensing objectives of the prevention of public nuisance. This had been due to a number of complaints relating to noise nuisance from music from within the premises and from the use of the garden by patrons.

During the consultation period of the Review, representations had been received from a number of interested parties (none of whom addressed the meeting), as set out in Appendix 3 to the Report. A representation had also been received from Hampshire Constabulary in support of the matters raised by the Head of Environmental Protection and the licensing objective of prevention of crime and disorder, as detailed in Appendix 2 of the Report.

Mr Myall drew attention to addendum 1 to Appendix 2, the proposed additional conditions that had been negotiated between the Police and Mr Collymore, the licence holder. He reported that should the Sub-Committee be minded to accept them, the Police had indicated that they would withdraw their previous representations. He suggested that a reasonable timescale for the new upgraded CCTV system to be installed would be three months and Mr Collymore agreed with this timescale.

Further written submissions were accepted by the Sub-Committee for consideration. These were addenda to Appendix 3 (two further representations from Interested Parties) and an addendum to Appendix 4 from the Licence Holder, responding to the matters raised in the written representations submitted.

Mr Myall also corrected an error in the Report. On page 9 of Annex 3 of Appendix 4 (Premises Licence) the previous review of the premises licence had been heard on 17 December 2007, and not '2008'.

Mr Ingram referred to the statement of Mrs Toms (Environmental Protection Officer) in support of her application for the review of the premises licence. He drew attention to the significant number of noise related complaints since Mr Collymore had become the licence holder for the premises in 2009. Mr Collymore had indicated that he had been unaware that a number of actions arising from an acoustics report undertaken by the previous licence holder had not been fully implemented. Since the serving of a Noise Abatement Order on

Mr Collymore in October 2009, Mr Ingram reported on a number of remedial actions undertaken to the fabric of the building which had been successfully implemented. Further complaints in 2010 had required further acoustics works to be undertaken. The licence holder had also, since that time, indicated that the garden would no longer be open to patrons after 2100 hours and that there would be no live music at the premises. In conclusion, Mr Ingram reported that there had been a marked improvement since all the above measures had been implemented, and since notice of this hearing, there had been no further complaints.

Mr Myall clarified that, although Mr Collymore had indicated that he would be happy to rescind the conditions of the premises license which related to live music, and also of his intention to turn music down to background levels half an hour before the terminal hour each day, the Sub-Committee might wish to agree that those changes be formalised as conditions.

PC Miller referred to the addendum to Appendix 2. He explained that there had been a low number of incidents at the premises that had required police intervention. He also recognised the professional conduct of the door staff, in ensuring that smokers and patrons queuing did not compromise the safety of those using the narrow pavement outside.

Mr Collymore addressed the Sub-Committee. In summary, he advised that the previous licence holder had not made him aware of the complaints relating to noise emissions from the premises. Since that time, he had worked closely with the Environmental Protection Team to implement improvements. He had also had positive discussions with neighbours with regard to their concerns. More recent issues (since February 2010) had been due to live bands and also that the fire door had not been properly acoustically sealed. A double-glazed frame had now been added to the single-glazed sash window. The garden was now closed from 2100 hours. He also detailed the specification of the upgraded CCTV system, as requested by the Police.

Mr and Ms Gilbert (in support of the licence holder) remarked that some of the complaints of Interested Parties related to noise nuisance several hours after the premises had closed. It was also suggested that some of the locations of disturbance could not be proven to have been directly caused by patrons of the Mikiki Lounge. There were also no Interested Parties present at the Hearing and therefore this was evidence that issues were now likely to have been resolved.

Mr Myall clarified that the non-attendance of the Interested Parties was not an issue, as the Sub-Committee must have regard to all of the written representations. Also, the Sub-Committee should give what weight they considered necessary to the representations, taking into account the nature of the complaints and the distance of the Interested Parties from the premises. Appendix 4b to the Report was a map indicating the locations of the Interested Parties' homes.

At the request of the Sub-Committee, Mr Collymore explained that, as an experienced and qualified door steward himself, he was careful to employ responsible and professional staff at the premises. For example, they would



not permit intoxicated patrons entry to the premises. Stewards who had allowed patrons into the garden when it should have been out of bounds had subsequently been dismissed.

In summing up, Mr Ingram advised that, in view of the improvements following the remedial works undertaken at the premises to date, he would withdraw the requirement for the sale of alcohol to cease at 11pm, subject to the other improvements being implemented. Those were that the garden should be closed to patrons at 2100 hours; that music should be turned down to background levels half an hour before the terminal hour each day, and that live music should be removed as a licensable activity at the premises.

The Sub-Committee retired to deliberate in camera to consider the application.

In her closing remarks, the Chairman stated that the Sub-Committee had carefully considered the application and the representations made. It had taken into account the duties under the Crime and Disorder Act 1998, and the rights set out in the Human Rights Act 1998.

The Sub-Committee agreed to vary the premises licence by amending the conditions proposed by the Licence Holder, as set out below.

#### REASON:

The amendments to these Conditions were imposed to address the concerns raised by the Police, the Head of Environmental Protection and the Interested Parties in order to promote the Licensing Objectives relating to the prevention of crime and disorder and public nuisance.

The Chairman also explained that the parties had 21 days in which to appeal against the Sub-Committee's decision to the Magistrates' Court.

#### RESOLVED:

That the application for a review of the premises licence be granted, subject to the following conditions:

1. A CCTV System must be installed and maintained to a standard agreed with Police.
2. All public areas must be covered by CCTV. This must include the front door and bar areas and must be capable of providing good quality head and shoulder images.
3. All images must be retained for 30 days and made available to an authorised officer on request.
4. There must always be a member of staff capable of operating the CCTV system whilst the premises are open for licensable activity.

5. Any images recovered must be in a format that can be readily taken away and viewed on any computer operating on any windows based program , or DVD player. This will be without the requirement for addition software to be installed.
6. The CCTV system must be operating at all times whilst the premises are open for licensable activity.
7. Records must be made and kept for inspection to show that the system is functioning correctly and that data is being securely retained.
8. The above conditions relating to CCTV (1 – 7) shall be complied with no later than 2 April 2011.
9. Whilst the premises are in use for the purposes of this Licence no customers shall be permitted to be in the garden for any purpose after 2100 on any day.
10. On Thursdays, Fridays and Saturdays, the volume of music shall be reduced to a background level no later than 30 minutes before the end of licensable activities.
11. The licensable activity, live music, shall be removed from the premises licence.

The meeting commenced at 9.30am and adjourned at 2.15pm (having determined the Bar 3 One Review). The meeting re-convened at 9.35am on 10 December 2010 (to determine the Mikiki Lounge Review of Premises Licence) and concluded at 11.25am.

Chairman