

CITY OF PLYMOUTH

Subject: Lavish, 48 Southside Street, Barbican,
Plymouth.
Variation of Premises Licence

Committee: Licensing Sub Committee (Miscellaneous)

Date: 10 November 2009

Cabinet Member: Councillor Brookshaw

CMT Member: Director of Community Services

Author: Peter Clemens
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Contact: (01752) 305465

Ref: ERS/LIC/PREM

Part: I

Executive Summary:

An application has been received from Thompson & Jackson Solicitors on behalf of Bar Rhumba Limited in respect of Lavish, 48 Southside Street, Barbican, Plymouth for the variation of the premises licence under Section 34 of the Licensing Act 2003.

Corporate Plan 2009- 2012:

This report links to the delivery of the corporate improvement priorities. In particular:

1. Informing and involving residents.
 2. Providing more and better culture and leisure activities.
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Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

Not applicable.

Other Implications: eg. Section 17 - Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment, etc.

Members should be aware that Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

Recommendations and Reasons for recommended action:

That Members consider this report.

Alternative options considered and reasons for recommended action:

None.

Background papers:

Application.
Licensing Act 2003.
Guidance issued under Section 182 Licensing Act 2003.
Council's Licensing Policy.

Sign off:

Head of Fin		Head of Leg		Head of HR		Head of AM		Head of IT		Head of Strat Proc	
Originating CMF Member											

1.0 BACKGROUND

1.1 On the 9th September 2009 the licensing department received an application from Thompson & Jackson Solicitors on behalf of Bar Rhumba Limited in respect of Lavish, 48 Southside Street, Barbican, Plymouth for the variation of an existing licence under Section 34 of the Licensing Act 2003.

1.2 Details of variation

Current Licensable Activities	Variation Application
<p><u>(e) Live Music</u></p> <p>Hours</p>	<p><u>(e) Live Music</u> (Indoors)</p> <p>Hours Mon to Sun 10.00hrs to Midnight</p>
<p><u>(f) Recorded Music</u> (Indoors)</p> <p>Hours Mon to Sun 10.00hrs to 03.00hrs</p>	
<p><u>(j) Provision of facilities for dancing</u> (Indoors)</p> <p>Hours Mon to Sun 10.00hrs to 03.00hrs</p>	
<p><u>(k) Provision of facilities for entertainment of a similar description to that falling within (i) or (j)</u> (Indoors)</p> <p>Hours Mon to Sun 10.00hrs to 03.00hrs</p>	
<p><u>(m) Supply of Alcohol for consumption ON the premises.</u></p> <p>Hours Mon to Sun 10.00hrs to 02.30hrs</p> <p>Non Standard Timings. From the end of permitted hours on New Year's Eve to the start of permitted hours on the following day</p>	
<p><u>(o) Hours premises are open to the public</u></p> <p>Hours Mon to Sun 10.00hrs to 03.00hrs</p>	

1.3 **Variation application.**

The nature of the proposed variation is;
To include the provision of live music within the permitted licensable activities at the premises.

1.4 Representations have been received in respect of this application.

1.5 **Cumulative Impact Policy**

This application does fall within an area to which the Cumulative Impact Policy applies and creates a rebuttable presumption that applications for new licences or variations to existing ones which are likely to add to the existing cumulative impact will normally be refused unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives if the application were granted.

2.0 **RESPONSIBLE AUTHORITIES**

2.1 Environmental Health – have made representation in relation to Public Nuisance (Appendix 1).

2.2 *Devon & Cornwall Constabulary* – no representations.

2.3 *Devon & Somerset Fire & Rescue Service* – no representations.

2.4 *Trading Standards* – no representations

2.5 *Planning Officer* - no representations.

2.6 *Child Protection* – no representations

2.7 *Health & Safety Executive* – no representations.

3.0 **INTERESTED PARTIES**

No representations have been received.

4.0 **CONSIDERATIONS**

4.1 The Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance;
- the protection of children from harm.

In making its decision the Committee is also obliged to have regard to the guidance issued under section 182 of the Licensing Act 2003 and the Council's own Licensing Policy and the representations (including supporting information) presented by all the parties.

The Committee must take such of the following steps as it considers

necessary for the promotion of the licensing objectives:

1. Modify the conditions of the licence
2. Reject the whole or part of the application;
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

Memorandum

From: Head of Environmental Regulation Service
To: HEAD OF LICENSING SECTION
FAO: PETE CLEMENS
Date: 23rd September 2009
Our Ref: DH/754178/SEPT195
Investigating Officer: D J Hughes
Extn: 4158



LICENSING ACT 2003
ENVIRONMENTAL HEALTH REPRESENTATION

Premise: Lavish, 48 Southside St, Plymouth, PL1 2LD
Name of Licensee: Bar Rhumba Ltd
Type of Application: Entertainment Licence
Report Prepared By:

Recommendations

1. ~~That this department has no comments regarding the Application.~~
2. This department would like to make the following representation;

LICENSING ACT 2003
ENVIRONMENTAL HEALTH REPRESENTATION

Name:

Address:

Report By: D J Hughes

Date of Inspection: N/A

The Text in bold are the conditions that this department will be putting before committee to be included in your operating schedule.

The text in italics is for your information.

Public Nuisance

See supporting information for Committee Hearing

Licensing Act 2003
Supporting Information for Committee Hearing following the Environmental
Regulation Service Representation

Premises Name: Lavish, 48 Southside St, Plymouth PL1 2LD

This department has made representation based on the following information.

Complaints were received from nearby residents concerning noise emanating from these premises between December 2005 and September 2007 and an Abatement Notice served on the persons responsible on the 28.9.07, as officers were satisfied of the existence of a statutory noise nuisance caused by noise from entertainment emanating from the premises. Part of the evidence considered in respect to noise nuisance was from the playing of live music.

This notice was the subject of an appeal that was considered at Magistrates Court on 29.7.08 and based on the evidence submitted was dismissed.

A further Notice of Appeal was submitted to Crown Court, however this appeal was withdrawn prior to the directions hearing set for the 6th November 2008.

Mr Oxinou sought to continue this appeal and on the 10th June 2009 the case was dealt with under the Crown Court's Civil Jurisdiction and was dismissed.

In the meantime a Review Hearing was held on the 18th November 2008, at which time the Licensing Committee attached conditions set out in Annex 3 to the premises licence.

As directed by Committee, officers sought to set maximum noise levels and after extended assessments within the premises and neighbouring residential property maximum levels were set and remain in place. Letters confirming these arrangements were sent to Mr Oxinou on the 9th April 2009 and reconfirmed on the 9th July 2009.

This case has been long and protracted and centres around loud music that was previously played on the premises.

Since the new licensing conditions were attached by the Licensing Committee and the setting of the subsequent maximum noise levels, by and large officers have had no cause to consider calling a further review or to consider any action for non-compliance with existing conditions.

Since the setting of maximum noise levels the primary concern has been to control the transmission of lower frequency noise through the party wall into the neighbouring residential properties. The recorded music played at this premises is similar in type and style thus can be reasonably controlled through the setting of maximum noise levels. The conditions set by Committee during the review of premises licence held on the 18th November 2008 were geared specifically to manage noise from regulated entertainment.

The introduction of live music would introduce a wide variety of new types and styles of music from solo artists to large bands and cause the premises to operate outside its existing licensing conditions and be contrary to the licensing objectives, in particular the prevention of public nuisance.

It is my opinion that this application be refused.

Alternatively if permission were granted the following additional conditions should be considered

1. Live Entertainment should be limited to 'low key music' typically classical guitarist and vocalist or traditional jass/blues music, as stated in the application (Section E – Live music)
2. Any one performance is limited to two hours duration, inclusive of any breaks.
3. Live entertainment to be limited to one event per day and two events per week.
4. Live entertainment shall not be permitted beyond 23.00
5. Condition 8 to be amended to include the words '.....live (including vocals) and recorded music....'
6. Maximum noise levels
 - Opening until 01.00 (Ground floor dance floor – 88dB(A) L₁₀
First floor dance floor – 86dB(A) L₁₀)
 - 01.00 until Closing (Ground floor dance floor – 88dB(A) L₁₀
First floor dance floor – 86dB(A) L₁₀)