

CITY OF PLYMOUTH

Subject: Heaven 162 Exeter Street, Plymouth.
Variation of Premises Licence

Committee: Licensing Sub Committee (Miscellaneous)

Date: 3 August 2010

Cabinet Member: Community Services Street Scene Waste and
Sustainability
Councillor Michael Leaves

CMT Member: Director for 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 Bed (SW) Limited in respect of Heaven, 162 Exeter Street, Plymouth for the variation of the premises licence under Section 34 of the Licensing Act 2003.

Corporate Plan 2010- 2013:

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 14th June 2010 the licensing department received an application from Bed (SW) Limited in respect of Heaven 162 Exeter Street, 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>(b) Films (Indoors)</u></p> <p><u>Hours</u> Mon to Thurs 10.00hrs to 23.30hrs Fri & Sat 10.00hrs to 01.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Non Standard Timings. New Years Eve 10.00hrs to 00.30hrs 2nd January 10.00hrs to 00.30hrs on the days following Sunday and Monday of Bank holidays, Christmas Eve and Boxing Day, Valentines Day, St Patricks Day, Halloween and Bonfire Night. Bank Holidays are Easter, May Day, Spring Bank Holiday and August Bank Holiday</p>	
<p><u>(c) Indoor Sporting Events</u></p> <p><u>Hours</u> Days and Timings including Non Standard Timings as above.</p> <p>.</p>	
<p><u>(e) Live Music (Indoors)</u></p> <p><u>Hours</u> Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 00.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Non Standard Timings. New Years Eve 10.00hrs to 00.30hrs 10.00hrs to 00.00hrs on the days following Sunday and Monday of Bank holidays, Christmas Eve and Boxing Day, Valentines Day, St Patricks Day, Halloween and Bonfire Night. Bank Holidays are Easter, May Day, Spring Bank Holiday and August Bank Holiday</p>	<p><u>(e) Live Music Both Indoors and Outdoors</u></p> <p><u>Hours</u> Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 01.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Outdoor Music to end Mon to Thurs 23.00hrs Fri & Sat Midnight</p>

<p><u>(f) Recorded Music (Indoors)</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.30hrs Fri & Sat 10.00hrs to 01.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Non Standard Timings. New Years Eve 10.00hrs to 00.30hrs 2nd January 10.00hrs to 00.30hrs on the days following Sunday and Monday of Bank holidays, Christmas Eve and Boxing Day, Valentines Day, St Patricks Day, Halloween and Bonfire Night. Bank Holidays are Easter, May Day, Spring Bank Holiday and August Bank Holiday</p>	<p><u>(f) Recorded Music Both Indoors and Outdoors</u></p> <p>Hours Mon to Thurs 10.00hrs to 01.00hrs Fri & Sat 10.00hrs to 02.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Outdoor Recorded Music to end Mon to Thurs Midnight Fri & Sat 01.00hrs Sun 23.00hrs</p>
<p><u>(h) Anything of a Similar Description to that falling within (e) (f) or (g) (Indoors)</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 00.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Non Standard Timings. New Years Eve 10.00hrs to 00.30hrs 10.00hrs to 00.00hrs on the days following Sunday and Monday of Bank holidays, Christmas Eve and Boxing Day, Valentines Day, St Patricks Day, Halloween and Bonfire Night. Bank Holidays are Easter, May Day, Spring Bank Holiday and August Bank Holiday</p>	<p><u>(h) Anything of a Similar Description to that falling within (e) (f) or (g) (Both Indoors and Outdoors)</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 01.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Outdoor to end Mon to Thurs 23.00hrs Fri & Sat Midnight Sun 23.00hrs</p>
<p><u>(i)Provision of Facilities for Making Music (Indoors)</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 00.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Non Standard Timings. As above</p>	<p><u>(i)Provision of Facilities for Making Music Both Indoors and Outdoors</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 01.00hrs Sun 10.00hrs to 23.00hrs</p>

	<p><u>(j) Provision of Facilities for Dancing Both Indoors and Outdoors</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 01.00hrs Sun 10.00hrs to 22.00hrs</p>
	<p><u>(k) Provision of Facilities for Entertainment of a Similar Description to that falling within (i) or (j) (Both Indoors and Outdoors)</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 01.00hrs Sun 10.00hrs to 23.00hrs</p>
<p><u>(l) Late Night Refreshment (Indoors)</u></p> <p>Hours Mon to Thurs 23.00hrs to 23.30hrs Fri & Sat 23.00hrs to 01.00hrs Sun 23.00hrs to 23.30hrs</p> <p>Non Standard Timings. New Years Eve 10.00hrs to 00.30hrs 2nd January 23.00hrs to 00.30hrs on the days following Sunday and Monday of Bank holidays, Christmas Eve and Boxing Day, Valentines Day, St Patricks Day, Halloween and Bonfire Night. Bank Holidays are Easter, May Day, Spring Bank Holiday and August Bank Holiday</p>	<p><u>(l) Late Night Refreshment Both Indoors and Outdoors</u></p> <p>Hours Mon to Thurs 23.00hrs to 01.00hrs Fri & Sat 23.00hrs to 02.00hrs Sun 23.00hrs to 23.30hrs</p>
<p><u>(m) Supply of Alcohol for consumption ON and OFF the premises.</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.00hrs Fri & Sat 10.00hrs to 00.30hrs Sun 10.00hrs to 23.00hrs</p> <p>Non Standard Timings. New Years Eve 10.00hrs to Midnight New Years Day 10.00hrs to 00.30hrs on the days following Sunday and Monday of</p>	<p><u>(m) Supply of Alcohol for consumption ON and OFF the premises.</u></p> <p>Hours Mon to Thurs 10.00hrs to 01.00hrs Fri & Sat 10.00hrs to 02.00hrs Sun 10.00hrs to 23.00hrs</p>

Bank holidays, Christmas Eve and Boxing Day, Valentines Day, St Patricks Day, Halloween and Bonfire Night. Bank Holidays are Easter, May Day, Spring Bank Holiday and August Bank Holiday	
<p><u>(o) Hours premises are open to the public</u></p> <p>Hours Mon to Thurs 10.00hrs to 23.30hrs Fri & Sat 10.00hrs to 01.00hrs Sun 10.00hrs to 23.00hrs</p> <p>Non Standard Timings. New Years Eve 10.00hrs to 00.30hrs 2nd January 10.00hrs to 00.30hrs on the days following Sunday and Monday of Bank holidays, Christmas Eve and Boxing Day, Valentines Day, St Patricks Day, Halloween and Bonfire Night. Bank Holidays are Easter, May Day, Spring Bank Holiday and August Bank Holiday</p>	<p><u>(o) Hours premises are open to the public</u></p> <p>Hours Mon to Thurs 10.00hrs to 01.00hrs Fri & Sat 10.00hrs to 02.00hrs Sun 10.00hrs to 23.30hrs</p>

1.3 **Variation application.**

The nature of the proposed variation is;

To include some extended hours (including outside area) together with the provision of music.

A copy of the operating schedule is attached (Appendix 1)

1.4 Representations have been received in respect of this application.

1.5 **Cumulative Impact Policy**

This application does not fall within an area to which the Cumulative Impact Policy applies.

2.0 **RESPONSIBLE AUTHORITIES**

2.1 Environmental Health – have made representation relating to Public Nuisance (Appendix 2).

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

1 - letter of representation has been received from a resident living within the vicinity of the premises. The letter contains 18 signatures from residents within the vicinity of the premises (Appendix 3).

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.

P Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b,c,d,e) (please read guidance note 9)

SMOKING ONLY IN ENCLOSED AREA - NO ON STREET SMOKING.
CCTV IS IN OPERATION THROUGHOUT PREMISES
CONTROL OF NOISE IS IN PLACE.
ENSURE NO PUBLIC NUISANCE.

b) The prevention of crime and disorder

CUSTOMERS ARE SEATED FOR MEALS + DRINKS
TO DATE NO PUBLIC DISORDER RECORDED.
FOR CHARITY EVENTS ORGANISERS ARE ON HAND.

c) Public safety

ALL FIRE REGULATIONS + PRECAUTIONS IN PLACE - AGREED
BY FIRE SAFETY OFFICERS.
ALL PUBLIC SAFETY PRECAUTIONS ARE IN PLACE

d) The prevention of public nuisance

ALL KITCHEN FUMES ADEQUATELY DEALT WITH + EXHAUSTION
SYSTEM APPROVED.
ENSURANCE THAT PERSONS LEAVE PREMISES QUIETLY
NO SMOKING OUTSIDE DESIGNATED AREA.
NOISE KEPT TO MINIMUM.

e) The protection of children from harm

CHALLENGE
R.D.

- NO UNDER 21 POLICY.
- CHILDREN ATTENDING FUNCTIONS, ONLY ACCOMPANIED BY
ADULTS.
- SCHOOL TRIPS WHERE PUPILS EXPERIENCE FOOD,
ALL ACCOMPANIED BY TEACHERS

Memorandum



From: Public Protection Service Manager
To: HEAD OF LICENSING SECTION
FAO: PETE CLEMENS
Date: 01 July 2010
Our Ref: EH.774676
Investigating Officer: Stephen Crooks
Extn: 4851

LICENSING ACT 2003
ENVIRONMENTAL HEALTH REPRESENTATION

Premise: Heaven, 162 Exeter Street, Plymouth, PL4 0NG

Name of Licensee: Bed (SW) Limited

Type of Application: Late Night Refreshment/Alcohol (On/Off/Both)/Entertainment Licence
(delete as necessary)

Report Prepared By: Stephen Crooks

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
Schedule Ref: EH/SC/774676
Name: Heaven
Address: 162 Exeter Street, Plymouth, PL4 0NG

Report By: Stephen Crooks

Date of Inspection: 01/07/10

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

- 1. Where regulated entertainment is held inside the premises, doors and windows will be kept shut at all times.**
(To prevent the escape of noise late at night that may negatively impinge on a local residents use and enjoyment of their premises, this condition does not restrict the reasonable access and egress of patrons)
- 2. Live and Recorded music outdoors will only be permitted when a function has been pre-booked and a substantial meal is provided as part of that function.**
(The provision of entertainment outdoors should only be permitted as part of a pre-booked function with a sit down meal from the main menu or with a buffet. Regulated entertainment outdoors is not permitted unless food is provided)
- 3. All regulated entertainment will last no more than three hours duration, inclusive of any breaks.**
(To reduce the length and duration of noise activities to reduce the potential for Public Nuisance)
- 4. No more than 12 performances of regulated entertainment outdoors shall be permitted in any calendar month.**
(To reduce the potential for public nuisance)
- 5. A member of staff will be nominated to deal with noise complaints, and will respond to local residents concerns if issues are raised, as well as any reasonable request made by an Officer of a Responsible Authority.**
- 6. Music noise should not be excessive/unreasonable at any time, responsible member of staff should take action to control music noise if found to be excessive/unreasonable.**

7. A senior member of staff (manager) will assess the impact of any noisy activities on neighbouring residential premises at the start of the activity/entertainment and periodically throughout the activity/entertainment.
(To ensure that noise levels are reasonable and that they are not increased. This member of staff should have ultimate control over the level of noise generated by the entertainment)

8. A diary of entertainment will be maintained at the premises and will be made available for inspection at the request of any representative of a Responsible Authority. Details of entertainment events must be documented within this diary and should include: Name, date and times of pre-booked performance, if any complaints have been received, if any action was taken to control music noise, and the time at which regulated entertainment ceased.
(This will form part of your management controls in order to ensure and prove that music events do not exceed your permitted maximum number of events as determined by your licence conditions)

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

Premise Name: Heaven

This department has made representation based on the following information.

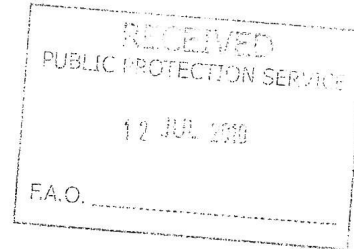
This application requests regulated entertainment be permitted outdoors, as such the noise from music will not be reasonably controlled within the structure of the premises which will allow noise to escape from the venue.

Due to the close proximity of neighbouring residential properties, there is a significant possibility that the music noise could negatively impact on local residents in the use and enjoyment of their properties.

Residents objection to licence application dated 14 June 2010 by Heaven, PL4 0NG

Licensing Team
Dept of Community Services
Plymouth City Council
PLYMOUTH
PL1 2AA

5th July 2010



Dear Licensing department

**Application Dated 14/06/01 = To Vary Premises Licence
Heaven 162 Exeter Street PL4 0NG**

We the undersigned wish to submit our objections to the licence application given above. The application as presented in the window of the restaurant to extend opening hours is as follows:

- Mon – Sat till 02:00am and Sunday 11:30pm inside
- Mon – Thu till midnight, Fri – Sat till 01:00am, Sun to 11:00pm OUTDOORS in the "beer garden"

Furthermore on checking the details of the application with your department we find that the restaurant has failed to advertise the full details i.e. they have not included the fact they wish to have live music/recorded music both inside and OUTDOORS of the premises as follows:

- Live Music**
- Mon – Thu till 11:00pm hours indoors and OUTDOORS
- Fri – Sat till 01:00am indoors and midnight OUTDOORS
- Sun – till 11:00pm hours indoors and OUTDOORS
- Recorded Music**
- Mon – Thu till 01:00 hours indoors and midnight OUTDOORS
- Fri – Sat till 02:00 indoors and 01:00 OUTDOORS
- Sun – till 23:00 hours indoors and OUTDOORS

To put our objections in context it should be noted that the premises concerned back onto the residential area of St Johns Street and that the "beer garden" shares a wall with the garden of no 2 St Johns Street and the joint access lane between St Johns Street and Alma Street.

As you can imagine in a residential area we have both adults and children who need to get to sleep at a reasonable hour not just during the week but at weekends also, to enable them to go to work and school. We would also expect to be able to have our windows open during the summer months and be able to listen to our own TV's / music without interference from events held in the "beer garden". There have been occasions when this has not been possible with the current arrangements of temporary licences for their occasional events and would only become worse should the licence be extended.

To date we have been understanding when occasional events have been held, there have been a number of disco's and live band's OUTDOORS in the beer garden past midnight and singing and shouting of drinkers in the beer garden up until closing time. As they do not have a license for music OUTDOORS they rely on temporary licences for the events, and have a regular events list for the coming months.

Residents objection to licence application dated 14 June 2010 by Heaven, PL4 0NG

We believe this request to extend opening hours with the corresponding request for a music licence OUTDOORS in a residential area would adversely affect a number of elements relating to your Licensing objectives, and therefore do not believe that an extension of their licence that also includes music outside of the premises until 11:00/midnight/01:00am in a residential area is viable.

We understand that in addition to the Noise Act 1996 noise nuisance is also incorporated into the Environmental protection act 1990, and is aimed at preventing the quality of our environment being reduced through excessive noise which could come from loud music, anti-social behaviour from nearby businesses, where the noise is loud and intrusive, whether persistent or intermittent, and which affects the quality and comfort of your life. Going on past events in the "beer garden" we can categorically say that the noise from the bands/disco's is loud and intrusive, affects our comfort and quality of life not least with having to have our windows closed during the summer evenings.

In conclusion we would hope you look favourably on our objections, whilst we do not wish to stand in the way of business success we would not wish it to come at the expense of local residents quality of life.

Yours sincerely

Name	Address	Postcode	Signature
	ST JOHNS ST	PL4 0NY	
	ST JOHNS ST	PL4 0NY	
	ST JOHNS RD	PL4 0NZ	
	ST JOHNS RD	"	
	ST JOHNS ST.	PL4 0NY	
	"	"	
	ST JOHNS ST	PL4 0NY	
	ST JOHNS ST	PL4 0NY	
	ST JOHNS ROAD	PL4 0NZ	
	" " "	"	
	St John Road	PL4 0NZ	
	ST JOHN'S ST.	PL4 0NY	
	ST JOHN'S ST.	PL4 0NY	
	St John's Street.	PL4 0NY	
	" "	"	
	" "	"	

Residents objection to licence application dated 14 June 2010 by Heaven, PL4 0NG

Name	Address	Postcode	Signature
	St Johns St.	PL4 0NG	
	ST JOHN'S ST	PL4 0NG	