ELMBRIDGE BOROUGH COUNCIL

LICENSING SUB-COMMITTEE

Report of a meeting held on 16th November, 2010

Members of Committee:
* I. Donaldson (Chairman)

* N.C. Cooper

* Mrs. C. Elmer

(* Denotes attendance)

(D.J. Archer, B. Fairbank, Mrs S.R. Kapadia and Mrs L. Robertson were also present.)

1. APPOINTMENT OF CHAIRMAN

The Sub-Committee appointed I. Donaldson as its Chairman for the hearing.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

MATTERS OF REPORT TO THE LICENSING COMMITTEE

3. PROCEDURE

The Procedure to be adopted for the hearing was noted by the Sub-Committee.

4. APPLICATION FOR VARIATION TO A PREMISES LICENCE – THE DITTONS, 64 DITTON HILL ROAD, LONG DITTON

(Link to Council Priorities: P3)

The Sub-Committee was addressed by Mr. S. Burnett, the applicant and by Mr. J. Hayward and Mr. D. Williams, representors against the application and by Mrs. J. Hargate on behalf of Mrs. G. Wiseman, a representor against the application.

The Sub-Committee considered a request for a variation to a premises licence. The details of the application were set out in the agenda papers. It was noted that the representation from the Long Ditton Residents’ Association had been withdrawn since the agenda went to print. It was also noted that there was an error on page 4 of the agenda, and the applicant had applied for opening hours of 8.00 a.m. - 1.30 a.m. on Friday and Saturday.

Mr. Burnett explained that his business was mainly food-based, and it was his intention that this should continue. He realised that the application might look quite drastic but he was not intending to run a late night pub or regular discos for young people. He was aware that over the summer the premises had unintentionally caused a nuisance for some neighbours and he had liaised with Environmental Health and amended his application to address the concerns of residents as set out at Appendix F in the agenda. He had offered to meet with local residents regarding his plans, and had spoken to some. He was aware that the pub had a history prior to his management, but he was proud of it now as a
safe, friendly community establishment. He wanted scope to move the business forward and grow.

In response to questions from Members, Mr. Burnett explained that he felt the main concerns of residents were noise at the rear of the premises and noises at closing time. Therefore, his proposed amendments included conditions that live or disc jockey (DJ) music was not to be played in the garden or garden room, that doors and windows would be shut when entertainment was taking place, and that sound levels would be monitored.

Mr. Burnett was aware that residents had expressed concern with regard to smells from late night cooking, and possibly the noise from the extractor fan. He had only applied for late night refreshment in the unlikely chance that a customer ordered hot food after 11.00 p.m. In practice, he thought it was unlikely the restaurant would wish to provide this service in the near future and was happy to withdraw this part of his application.

Mr. Burnett stated that he was happy to work with residents to find solutions to parking problems, including liaising with the school. However, the Sub-Committee noted that this was not a licensing matter.

Mr. Burnett informed the Sub-Committee that the events he was anticipating hosting would primarily be 30th and 40th birthday parties, wedding receptions and wedding anniversaries. The premises also hosted christenings, but they were usually during the day. There was only one occasion since he had taken over where the premises had required door staff, which was for a 21st birthday where over 100 guests had attended. This sort of event was not a regular part of his business, and he did not feel that security staff were generally necessary or appropriate, because they gave the impression that the premises was operating as a late night bar. However, he did ensure that his staff were appropriately trained, and that sufficient staff were present at all times.

Mr. Burnett did not object to the conditions attached to the licence, such as doors and windows being shut, being made publicly visible at the front of the building.

Mr. Hayward informed the Committee that Mr. Burnett’s company had taken over running the premises around two years previously. In that time, he and other residents had made a number of complaints to the Environmental Health team at the Council. Noise was a subjective issue, with different levels acceptable to different people, and it was difficult to set a standard. He had concerns on parking issues, although he acknowledged this was not a licensing matter. He was also concerned that there could be migration from other premises. He felt the licensee should take more responsibility for the behaviour of those leaving the premises.

Mr. Hayward expressed concern that if the garden was used for late night refreshment, this would cause smell and noise. He believed that in practice it might be difficult to keep doors and windows shut because customers would open them. He was also concerned that the proposed condition requiring noise monitoring did not specify that this should be done by an independent person, but an employee of the premises, and only referred to the front of the premises, not the rear. He felt that while Mr. Burnett said he was listening to neighbour concerns, they had not been addressed, and the premises should not be granted
a variation until it had been operating the existing licence for twelve months without further issues.

Mrs. Hargate agreed with many of the points raised by Mr. Hayward. There was noise from the rear garden even without music, including from children who appeared to be out there quite late. She was not sure conditions requiring doors and windows to be shut would be practical, particularly with smokers going in and out. Mr. Burnett had not responded promptly to issues of maintenance and rubbish to the rear of the premises. She felt longer hours would exacerbate problems at the premises, and also that if the current owners left, the hours could be used by new owners to run the premises in a different way. There was noise late at night from cars leaving the premises.

Mr. Williams lived across the road from the premises, and commented that he was less affected by noise and smells coming directly from the premises. However, he was affected by noise and disorder from people leaving late at night. There had been an improvement under the current management, and the premises was a good community facility, but a late night extension of hours was not appropriate in a residential area.

In response to a question from Members, the senior solicitor clarified that noise from customers leaving fell under prevention of public nuisance, which was a licensing objective. It was reasonable to require Mr. Burnett to do his best to ensure his customers left without causing a nuisance. However, he could not reasonably be held responsible for their behaviour all the way home.

Mr Burnett responded that he believed his proposed amendments would address most of the points raised. There was an issue with the extractor fan, which Environmental Health was involved with, and he would be carrying out work shortly. He was also continuing to remove rubbish left by the previous owners. However, these were not licensing matters. He did his best to encourage patrons to leave quietly. There were signs up advising people to do so, and at regular events such as the quiz night, the compere asked people to leave quietly.

In response to questions from Members, Mr. Burnett said that the premises did not have air conditioning, although if the business expanded he could consider installing it. Hirers would be informed that they could not have windows and doors open during their events. Most events did not take place in the summer. He noted that with regard to live music, this would generally only be a couple of performers. He also noted that in the past, all the complaints about music had been when the garden room or the garden had been used. The proposed amendment to his application allowed only the bar and the brasserie to be used for music, and there had not been any complaints when these rooms had been used in the past.

Officers confirmed that they were aware that the Environmental Health team had received complaints regarding these premises, and this was why Environmental Health Officers had contacted Mr. Burnett to ask him consider amending the operating schedule on his application, which he had done. As a result the Environmental Health team, as the Pollution Control Authority, had not submitted a representation. Licensing Officers did not have details of the complaints, as these are a matter for the Environmental Protection Authority, although they believed most were now closed.
Mr. Burnett summarised by saying that he was keen to work with residents and the Council. He did not want to run a late night drinking premises, and live music would not be large events. He would be happy to have signage to encourage customers to leave quietly. Also, if it would help allay residents’ fears he was willing to further amend his application to reduce the times applied for as follows:

**Sale of alcohol**
Monday - Thursday 10.00-23.00  
Friday - Saturday 10.00-00.00  
Sunday 11.00-22.00

**Exhibition of Films**
Sunday – Monday 00.00-00.00

**Live Music**
Monday – Thursday 10.00-22.30  
Friday – Saturday 10.00-23.30  
Sunday 10.00-22.00

**Anything of a similar description to live music, recorded music and performance of dance, specifically discos**
Monday-Thursday 10.00-23.00  
Friday-Saturday 10.00-00.00  
Sunday 10.00-22.00

**Dancing**
Monday-Thursday 10.00-23.00  
Friday-Saturday 10.00-00.00  
Sunday 10.00-22.00

**Late Night Refreshment**
This section of the application had been withdrawn.

**Extension of Opening Hours**
Monday-Thursday 08.00-00.00  
Friday-Saturday 08.00-01.00  
Sunday 08.00-22.00

Mr. Burnett stated that he had made the opening hours longer than the hours for sale of alcohol to allow for drinking-up time. It was also clarified that “Anything of a similar description to live music, recorded music and performance of dance, specifically discos” was a category in the legislation, intended as a ‘catch all’ category for entertainment similar to live or recorded music or dancing, for example karaoke and disco.

Mr. Burnett confirmed that he had deliberately made the concluding time for live music earlier than that for dancing and for entertainment of a similar description. This was partly because it was more difficult to control the volume of live music. Also, if a customer happened to start dancing, he felt it would be unnecessary to have to ask him to stop, as there would be little effect on the neighbours. However, if the Sub-Committee felt it was necessary, he would be prepared to accept these two aspect of the licence being restricted to the same times as for live music.
Mr. Hayward concluded by saying that most of the issues with the premises occurred in the summer, including previously having a steel band in the back garden. The fact that there were not complaints currently open was therefore unsurprising. Mrs. Hargate commented that the applicant had responded slowly to the issues around rubbish and the extractor fan and while this was not directly relevant to the application, she felt that this was indicative of a wider problem.

Having considered all the evidence, the Sub-Committee granted the variation to the premises licence, subject to the following times and additional conditions:

<table>
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<tr>
<th>Licensable Activity</th>
<th>Mon</th>
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<th>Thurs</th>
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<td>B) Films</td>
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<td>E) Live Music</td>
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<td>H) Anything of a similar description to live music, recorded music and dance</td>
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<td>J) Provision of facilities for dancing</td>
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<td>M) Supply of Alcohol</td>
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<td>O) Opening Hours</td>
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<td>08.00-01.00</td>
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<td>08.00-22.00</td>
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Non Standard Timings: Granted as applied for

1) Additional condition: There will be a maximum of 12 events in any 12 month period involving live music and/or Disc Jockies. Live music shall take place in the bar or brasserie area only and Disc Jockie events shall take place in the brasserie area only. Any live music will be in the form of karaoke or singers/musicians performing as duets only and shall not include drums. The 12 events in any 12 month period shall include events which take place under a Temporary Events Notice.

Reason: To minimise the impact of large events on the neighbourhood.

2) Additional condition:
Except for access and egress, doors and windows to the licensed area and including both lobby doors to the front of the premises, shall be kept closed at all times when live music and or karaoke and events involving Disc Jockies are taking place. The concertina doors to the garden will be kept closed when there are live music, karaoke or events involving Disc Jockies taking place.
Customers shall be encouraged to use the garden lobby exit only.

Reason: To minimise the impact of noise emanating from the premises and causing a nuisance to those living nearby

3) Additional condition:
No live or recorded music shall be played outside the premises.

Reason: To minimise the amount of noise nuisance emanating from the premises and causing a nuisance to those living nearby.
**4) Additional condition:**

Signage shall be displayed throughout the premises and at the exits reminding customers that it is a residential area and they need to respect the neighbours and keep noise to a minimum. In addition, the conditions imposed by the sub-committee on 16 November 2010, shall be displayed at the main entrance to the premises so that they are clearly visible from outside the premises.

**Reason:** To remind those using the premises that this is a residential area and in order to foster a spirit of cooperation between patrons and management

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<th><strong>5) Additional condition:</strong></th>
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<td>A responsible person shall be appointed to monitor and control music noise levels during live music, Disc Jockie or karaoke events, as well as noise from customers. Checks shall be made at 30 minute intervals at all accessible boundaries of the premises during events. Music noise from the pub shall be barely audible with no strong bass beat. Where the noise levels are deemed to be too loud, action shall be taken to reduce the noise levels. A written record shall be kept of the checks carried out, retained for a period of six months and made available for inspection to anyone on request. Where necessary, the appointed person shall also be responsible for ensuring that customers leave the premises quickly and quietly.</td>
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**Reason:** To monitor noise emanating from the premises

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The meeting commenced at 2.00 p.m. The Sub-Committee withdrew to deliberate at 3.15 p.m., returned at 4.00 p.m. and concluded at 4.06 p.m.

I. DONALDSON
Chairman

**Committee and Member Services Officer**

M. Toze

**Other Officers in attendance**

- A. Knights - Senior Licensing Officer
- C. Browne - Senior Solicitor
- G. Mumtaz - Licensing Officer
- G. Healy - Solicitor