

LICENSING & GAMBLING ACTS SUB COMMITTEE

11TH DECEMBER 2007

DIRECTORATE OF FINANCE AND CORPORATE SERVICES

**REPORT OF THE LICENSING MANAGER
– J. M. SULLIVAN**

INDEX OF REPORT ITEMS

PART 1 – Doc.Code: LICAS-111207-REP-FS-JS

SECTION A – MATTERS FOR DECISION		
Report Item	Page Nos	Wards Affected
1. Licensing Act 2003 Applications		
Ref.No.: 006924 Description: Vary Premises Licence Name: Kiwi's Address: The Parade, Neath,	2-9	Neath North

1.0 Application for Variation of Premises Licence

Ref.No.: 006924 Wards Neath North
Affected:
Premises Name: Kiwi's
Premises Address: The Parade, Neath, Neath Port Talbot
Applicant Name: Rushouter Ltd
Applicant Address: Progress Works, Seawall Road, Cardiff
DPS Name: Mr James Andrew Gretton
DPS Address: 75 Clonakilty Way, Pontprennau, Cardiff
Application Date: 22/10/2007

1.1 Variation Application

To **remove** the following conditions:

1. Last entry/re-entry 2 hours before end of permitted hours
2. The embedded Licensing Act 1964 condition, which relates to credit sales and states that:-

Alcohol shall not be sold or supplied unless it is paid for before or at the time when it is sold or supplied, except alcohol sold or supplied:

- a) with and for consumption at a meal supplied at the same time, consumed with the meal and paid for together with the meal;
 - b) for consumption by a person residing in the premises or his guest and paid for together with his accommodation;
 - c) to a canteen or mess.
3. All windows and doors to the room where amplified music is played must be kept closed

1.2 Existing Licence Details

Supply of Alcohol:

Monday - Sunday 12:00 - 02:00

Opening Hours - Standard Timings:

Monday - Sunday 12:00 - 02:30

Live Music:

Monday - Sunday 12:00 - 02:00

Recorded Music:

Monday - Sunday 12:00 - 02:00

Facilities for Dancing:

Monday - Sunday 12:00 - 02:00

1.3 Background Information

Large Semi Detached building in Neath Town Centre. Open plan bar to the ground floor with patio area to the side. Toilets on the first floor.

1.4 Promotion of Licensing Objectives

No additional steps are indicated to promote the licensing objectives.

1.5 Relevant Representations:

Responsible Authorities

Environmental Health - See Appendix 1

Interested Parties Representations

Miss J.T. Brinkworth

1/3 Riverside, Neath - See Appendix 2

1.6 Policy Considerations

It is considered that the following policies are relevant to this application:

Statement of Licensing Policy

Prevention of Public Nuisance

- Licensed premises, especially those operating late at night and in the early hours of the morning can cause a range of nuisances impacting on people living, working or sleeping in the vicinity of the premises. The council wishes to maintain and protect the amenity of residents and businesses from potential consequence of the operation of licensed premises. However it also recognises the economic, social, and cultural importance that such premises provide, and will endeavour to ensure that a reasonable balance is maintained.
- The Council will expect operating schedules to demonstrate that suitable and sufficient measures have been identified, and will be implemented and maintained to prevent public nuisance. The extent and nature of these measures will be determined by the style and characteristics of the premises and events.

Secretary of State's Guidance

- Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.

1.7 Summary

The Environmental Health Officer makes representations in respect of the prevention of public nuisance. Concerns are expressed that the removal of the condition relating to windows and doors, will give rise to public nuisance. The resident has expressed similar concerns in respect of noise nuisance from the premises.

1.8 Recommendation

That members determine the application after taking into account the representations received

List of Background Papers

Application for variation of premises licence.

Officer Contact

J Sullivan - Licensing Manager

Tel 01639 763056 email j.sullivan@npt.gov.uk

Wards Affected

Neath North

APPENDIX 1



Neath Port Talbot
Castell-nedd Port Talbot
County Borough Council Cynghor Bwrdeistref Siro

Making a difference Gwahaniaeth er gwell

Tony John From **Oddi wrth**
Tel **Ffôn**
01639 686360 Date **Dyddiad**
26/10/2007 Your Ref **Eich Cyf**
Our Ref **Ein Cyf**
TJ/132708

Memorandum Memorandwm

To At

TO: Licensing Section FAO Jim Sullivan

SUBJECT: Licensing Application received for a variation at Kiwis, The Parade, Neath.

I have the following comments to make relating to the application listed –

1. This application seeks to remove the embedded conditions imposed by The Licensing Act 1964 and Local Government (Misc. Provisions) Act 1982 which includes the condition that when amplified music is being played that the windows and doors of the premises are kept closed save for access.
2. The purpose of the above condition is to minimise noise disturbance to other noise sensitive property in the area and to promote the licensing objective – the prevention of public nuisance.
3. The Institute of Acoustics in its Guidance on the Control of Noise from Pubs and Clubs recommends that entertainment noise from such premises shall be inaudible inside any noise sensitive property.
4. I am of the opinion that if the windows and doors of the property are kept open when amplified music is played (which includes live music) the above standard could not be achieved and for this reason I would recommend that the removal of this condition be refused.
5. It should also be noted that this section has received a complaint from a local resident relating to noise from this premise when doors to the outside beer garden have been left open.
6. If it is the committees decision to allow the application I recommend that the standard condition relating to inaudibility as specified in point 3 be applied to the licence.

Tony John
Environmental Health Officer

1/3 Riverside
Off Bridge Street
Neath SA11 3LH
10 November 2007

Licensing Department

To Whom It May Concern

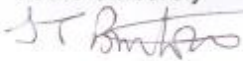
Re: Kiwis application to change their licence, Neath

Once again, I would like to write to strongly object to Kiwis wanting to renew their Licence clause to keep their doors open. It is ludicrous to think that the manager has even thought of applying for such a change! Since I first started complaining to the council in March this year, he has been fully aware of my objections about the loud music emitted from his premises. The Noise Nuisance caused by both their live bands and DJ/disco was due to the manager choosing to disregard the law so he could blare his music as loud as possible to attract customers. I witnessed large loudspeakers placed in the beer garden and patio/entrance doors being all opened with no regard for people outside the premises who had to put up with Noise Nuisance which sometimes went on past midnight! I was told the Castle Hotel also complained to the council about their Thursday Live Bands because they kept both their entrance doors open as well as their patio doors.

The manager was told by both myself and the council to adhere to his licence clause restrictions but he still continued to abuse them and the council had to warn him of the consequences should he not do so. After being told by both the council and myself to adhere to the law and their licence clauses, the manger still chose to not keep all their doors closed. It is my opinion that public houses have chosen to blare out their music after being told by the Government they could extend their hours to sell alcohol. This has now had the knock-on effect of bringing out a new law stating people should not have to suffer any noise after 11pm. I support the Licensing Department keeping such a clause for public houses to contain music because otherwise it will act as a precedent for others to follow Kiwis blaring out their music. Having been on the receiving end of Noise Nuisance from public houses who have not contained their music and having found how much it has disturbed my peace of mind, I believe that not only should Kiwis adhere to their present clauses but should also be regularly checked to see they are keeping to their decibel restrictions. It is not fair for people who are not Kiwis customers' but residents outside their premises to have such loud music subjected into their own homes. The recent Courier Article about one of their neighbours objecting to Kiwis' blaring music clearly defines that Kiwis should not only be brought to follow their licence clauses but also be investigated to ensure they 'contain' their music and not just turn up the noise when it suits the manager.

Kiwi's manager's disregard for his surrounding residents to enjoy their property has clearly shown his contempt for the Noise Nuisance he has caused and he has also shown he who will stop at nothing having previously disregarded the law, council and other people's complaints, to make a profit! I would be grateful if you could take all necessary steps as soon as possible to ensure that Kiwi's adheres to the law.

Yours Sincerely



J T Brinkworth (Miss)

LICENSING SECTION
16 NOV 2007
REFERRED TO:-



1/3 Riverside
Off Bridge Street
Neath SA11 3LH
17 November 2007

CC EVH
Licensing Department

To Who It May Concern

Re: Kiwis Noise Nuisance

After a blissful week end of peace as the Athletic club did not hold any functions, my relaxing mood was soon changed when I heard blaring music from my bedroom window at 11.05pm when I decided to open it after I had returned from the caravan to go to bed. I was undecided to go out to see if Kiwi's had more than 1 patio door open but at 11.30pm I decided to go out into the wind and rain to investigate. I could hear the DJ and beat music from outside my house up our private road then it was as loud as if I were in their public house when I got to the top of Bridge Street. I followed the music up past the traffic lights at Morrisons where the ground was vibrating from there on as I went around the side of the Angel then passed Kiwis and looked in to see both sets of entrance doors were open. At 11.35pm I then walked around past the beer garden where I saw the 2 patio doors on the left side wide open (looking up from the beer garden i.e.)!

When I returned home as I had now been awoken by this dreadful Noise, I could not sleep so I closed shut my bedroom window and thus wrote this letter. Having previously written to the council since March about the Noise Nuisance, on various occasions about the noise emitting from Kiwi's and having witnessed the manager still keeping one of his patio doors open in the evenings because he had turned the music down, I am now infuriated to see that it did not take him long to turn his music back up and open more patio doors!


I suggest the council now blatantly warn the manager there that he has to contain the noise by adhering to the clauses of his license to keep 'all' doors closed as well as his inside entrance doors! I would also strongly suggest that the council inform Kiwi's that they will carry out random checks on the decibel levels emitted from the DJ's sound equipment.

I am totally frustrated from having to put up with the noise coming from Kiwis especially as he has allegedly been told by the council to adhere to the clauses in his license. He knows full well that myself, one of the nearby residents and the Castle have all complained about the noise but he has chosen not to listen. I feel it is time for the council to set a precedent with this public house so that others will fear to tread in his footsteps. This manager has persistently chosen to blatantly play his music as if he were at an open air concert at Wembley, he has no regard for anyone else around him or of the time of day/night, I think he has been watching too much Dr Who because he is not lost in space where there time has no meaning, but he is here on earth where laws have to be followed!

Instead of the manger's recent request to vary his licence to have his doors open, I would prefer that he now be told that his license will be changed to a curfew of 11pm and if he dares to contradict the law of the land one more time, then he will be shut down. Such bad manners and insolence of ignoring other people's quality of life through him causing a Noise Nuisance after 11pm and past midnight should now, 8 months on from my first Noise Nuisance complaint, result in Kiwis being fully investigated. I for one have had enough of such Noise and I dare to think what his neighbours' enjoyment of their property will be like being so close to Kiwi's itself. It is about time something was done to push the manager into a corner whereby he is firmly told that this is no light matter and that the council protect the surrounding residents' peace of mind once and for all by stopping these loud 'disco open air concerts' before anyone else follows suit.

I would be grateful if you would act immediately as I do not want to go through all that stress once again, all I request is the same opportunity to have a relaxful week end having worked all week and sought refuge for peace and quiet in my own home. The law states there should be no Noise Nuisance after 11pm so it is not right that Kiwi's also disregard this law on top of the ones he is already flouting. If I were the judge and he were on trial, I would show no mercy as 8 months on he is still violating his licence clauses. As I write this letter past midnight at 12.20am the music is still blaring out!

Yours sincerely



J T Brinkworth (Miss)