

IN THE Highbury Corner Magistrates' Court

BETWEEN:

ELECTRIC STAR LIMITED

(On behalf of The Star of Kings, 126 York Way, London, N1 0AX)

Appellant

-and-

THE LONDON BOROUGH OF ISLINGTON

(The Licensing Authority)

Respondent

1. This is an appeal under section 181 and schedule 5 of the Licensing Act 2003 ['the Act'] against the decision of the Licensing Sub-Committee of the London Borough of Islington ['LBI'] on 20.11.12 in determining a review brought by Michael Sweeney, a local resident, of the premises licence for The Star of Kings ['the Star']. Electric Star Limited ['ESL'] is the licence holder for the premises.

The Premises and Locality

2. The Star is located on York Way, a predominately residential area. Nevertheless it is a busy area with other licensed premises in the locality and the road is busy both day and night. During the day the premises operates as a pub serving food until 10pm. It has a late license until midnight during the week and 02.00 hours on Friday and Saturday nights. It has a capacity of 300 on the ground floor and 100 in the basement. The basement is used for events, including parties, bands and DJ events. There have historically been problems with the premises under a different licensee when the premise was known as Backpackers. There is no complaint about the way the premises is run inside since it has operated as The Star. The problems have arisen with the use of the forecourt area at the front of the premises and dispersal of customers.

The Licensing Sub-Committee decision

3. On 20.11.12 the Licensing Sub-Committee made the following decisions:
 - a) To reduce the sale of alcohol to end at 0100 hours on Friday and Saturdays (a reduction of 1 hour), with closing time at 0130 hours.
 - b) To reduce the maximum capacity from 400 to 300 (200 on the ground floor and 100 in the basement).

The decision and reasoning of the Sub-Committee are found at p321-326 of the Respondent's bundle. They found clear noise disturbance caused by patrons of the premises. They found that the licensing objectives would be promoted by a reduction in hours and capacity due to lack of confidence in the management dealing with dispersal in the context of a residential area.

Legal Framework

4. This is an appeal by way of re-hearing. However, following *R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWHC Civ 31, this appeal court should only reverse the decision of the Licensing Sub-Committee if it is satisfied that the decision was wrong in light of the evidence before the magistrates' court. It is for the Appellant to prove that it was wrong on the balance of probabilities.
5. I have also been directed towards other case law, including:
 - a) *R (Townlink Ltd) v Thames Magistrates' Court* [2011] EWHC 898 – The court should make its own findings of fact on the material issues.
 - b) *Little France Ltd v Ealing LBC*, unreported, 15.02.13 – This deals with the adequacy of the Sub-Committee's reasons.
6. The Licensing Authority and therefore the court in any appeal must carry out its functions under the Act with a view to promoting the licensing objectives. The relevant objective in this case is the prevention of public nuisance. The court can take what steps it considers appropriate to promote the licensing objectives.
7. The court must have regard to the national guidance and the LBI licensing policy. It is unnecessary for me to rehearse the policies here. However I note the following:
 - a) April 2012 national guidance:
 - Para 2.34 – 'It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally...It may also include in appropriate circumstances the reduction of the living and working amenity and environment of person living and working in the area of the licensed premises.'
 - There is acknowledgement that there may be some disruption as customers leave premise but it should be 'minimal'.
 - A factor the court can consider is the financial burden of any restriction.
 - b) At the time of the Sub-Committee decision the relevant local policy was the 2011-2014 policy. Much of this policy is repeated in the 2013-2017 policy which it is agreed is the relevant policy for this court to consider. Of particular relevance in the 2013-2017 policy are:

- Policy 7 – ‘Licensing Authority may seek to restrict hours of opening where it is appropriate to promote the licensing objectives.’
- Policy 9 – ‘Encourages the highest standards of management’ and ‘will impose restrictions and conditions that are appropriate for promoting the licensing objectives.’
- Policy 18 – ‘committed to protecting the amenity of residents...in the vicinity of licensed premises, particularly when late hours have been sought.’
- Policy 21 – ‘normally require all licensed premises to be cleared of patrons within a reasonable period, usually 30 minutes’.

Chronology

8. Dec 2010 - Licence transferred to ESL

22.08.11 - Licensing Sub-Committee heard an application to vary the premises licence. Application to extend hours withdrawn. 26 objections from residents, councillors, police and health and safety were received. Some changes made to the licence conditions including: member of staff to monitor all persons on forecourt after 22.00 hours, table and chairs outside to be rendered unusable after 22.00 hours.

02.09.11 - Licensing Officers observed very intoxicated customers, insufficient door staff, poor management of customers outside the premises and whilst leaving, and non compliance with the taxi and CCTV conditions.

23.09.11 - Meeting between LBI and licensees to discuss complaints made by residents and the observations by licensing officers. Action plan agreed including: barriers to demark forecourt from pavement, more door supervisors on busy nights, door supervisors to actively engage with noisy customers, limit of 10 smokers outside after 22.00 hours, customers outside to remain on forecourt rather than pavement. Matters agreed confirmed in letter dated 29.09.11.

01.11.11 - Review application by Lorraine Gibney, local resident. Representations made by Michael Sweeney.

15.12.11 - Hearing of review application. A number of further conditions were imposed on the licence including: only 15 people outside after 22.00 hours and not permitted to take drinks outside, duty manager to supervise dispersal of customers at the end of the night, door supervisors to encourage people to disperse as they leave and not to loiter, management to be more actively involved in seeing customers off the premises, customers to be proactively monitored for rowdiness outside the premises, where a taxi is requested staff to call taxi for customer and remind customers that it would be wise to wait inside for the taxi.

06.09.12 - Meeting between LBI and Licensee and Designated Premises Supervisor to discuss noise complaints received from residents.

27.09.12 - Review application by Michael Sweeney, local resident. Representations from four other

residents: Janys Lomax, Clementina Walters, Agnes Fagbohunge, Lorraine Gibney. Also representations from the LBI noise team, licensing authority and Paul Convery, the local ward councillor.

20.11.12 - Hearing of review application

Evidence of Residents

9. Lorraine Gibney is a local resident living at 65 York Way, 265 Copenhagen Street, about 200 yards from the premises.
 - a) Her review application on 01.11.11 was based on anti-social behaviour from customers loitering outside the venue at all hours waking her and her children, mostly on Friday and Saturday nights. Customers were smoking, drinking, shouting, fighting and arguing after 02.00 hours. She had spoken directly with management but the problems had not been resolved. The following is a summary of her noise diary:
 - 02.09.11 - Anti-social behaviour until 03.00 hours.
 - 16&17.09.11 – Anti-social behaviour 02.15-02.35 hours and 02.20-03.15 hours.
 - 01.10.11 - Anti-social behaviour until 05.00 hours.
 - 07.10.11 - Noise from people leaving the venue at 00.30 hours.
 - 15.10.11 - Noise from 02.20-02.45 hours.
 - 16.10.11 - Woken at 02.15 hours by noise from people talking.
 - 22.10.11 - Woken by anti-social behaviour at 02.30 hours.
 - 29.10.11 - Anti-social behaviour from 00.55-02.50 hours. No sign of security outside venue.
 - b) Since the last review hearing she made a complaint to LBI on 21.04.13 at 02.40 hours about customers screaming and shouting by the electricity box near the premises.

10. Michael Sweeney is a local resident living at 11 York Way Court, 265 Copenhagen Street, about 30 metres from the premises.
 - a) He made a review application on 27.09.12. He complains of problems with the venue over the last 12 years. He describes himself as a ‘campaigner’ and has an agenda that the venue should not have a licence beyond 23.00 hours. He is particularly aggrieved that the venue is able to operate as what he perceives to be a ‘nightclub’ with a late licence and music events. The tone of his emails to the management at the Star have on occasions become personal and unpleasant.
 - b) He said he is disturbed most weekends in the early hours by yelling, screaming and shouting of patrons from the premises.
 - c) In his review application he detailed the following incidents which I summarise. Where relevant, the response by Steve Macri, the Designated Premise Supervisor, is listed in [].
 - 27.06.12 - 02.30-03.10 hours woken by anti-social behaviour.

09.06.12 - 02.10-02.25 hours woken by anti-social behaviour. [Bar closed 01.00 hours, very quiet night.]

10.06.12 - 01.00-02.30 hours continuous intermittent loud noise from customers. The court was shown footage filmed from his bedroom window showing noise from people and cars by the venue.

25.06.12 - 01.30-01.40 hours by anti-social behaviour. [Closed by 23.00 hours]

14.07.12 - 00.05-00.30 hours anti-social behaviour.

25.07.12 - 22.30-22.40 hours – Loud noise from customers who were using benches outside. [The manager ensured the benches were re-stored. Different system in place now to ensure benches not used after 22.00 hours.]

04/05.08.12 - Loud noise at intervals until 02.40 hours

25/26.08.12 - Large crowd causing much public disorder. The court was shown footage filmed outside the venue showing large numbers of people in the street outside the venue causing noise disturbance at 02.30 hours.

31.08.12/01.09.12 - 23.20 hours large number of customers causing public disorder. The court was shown footage filmed from his bedroom window at 23.40 hours and 00.03 hours.

15.09.12 - 00.40-01.10 hours anti-social behaviour.

He also had a petition of 44 names supporting his application. It should be noted that there was a petition of 32 names opposing the review.

d) Since the review he has complained of the following incidents:

27.01.13 - Large groups of people causing disturbance up to 02.55 hours.

CCTV viewed by Terri Lane who notes large groups of customers and security acting appropriately and CCTV inconclusive.

28.03.13 - Disturbance in the early hours.

31.03.13 - Lone male, wanders in, ejected, police/ambulance called 7.45pm.

07.04.13 - Disturbance in early hours. CCTV with customers still leaving at 2.55am. The court was shown footage filmed at 02.29 and 02.32 hours.

e) I consider that he was unfairly criticised for referring to other local residents being disturbed.

Whilst I do not rely on that part of the evidence it is not uncommon for an individual to become an unofficial spokesperson. He said many residents did not wish to complain directly and that was also the view of Lorraine Gibney. I find that any error in holding himself out as vice-chair of the York Way Court Resident Association before it was properly formed was a genuine mistake.

11. Other residents attended court and gave evidence:

a) Agnes Fagbohunge lives at 43 Your Way Court, 265 Copenhagen Street which is at the back of the premises. She gave evidence that she and her family were regularly disturbed by customers of

the premises. She detailed two incidents in the last six weeks when after 03.00 hours she was disturbed by noise from customers and music and another occasion at around 01.00 hours when customers on the forecourt were being noisy.

- b) Kevin Rice, 35 York Way Court – gave evidence in support of the Star.
- c) Sandra Davies, 20 Tiber Gardens – gave evidence in support of the Star.
- d) Sandra O’Neill, 44 York Way – Lives behind the pub, next door to Agnes Fagbohunge, and gave evidence in support of the Star that she had not been disturbed.
- e) Betty Gurie, 5 Tiber Gardens – gave evidence in support of the Star.
- f) Sonia King, 69 Tiber Gardens – gave evidence in support of the Star.

12. The following residents provided statements in support of the Star:: Jean Hanneh, 47 Tiber Gardens; Sande, 51 York Way; Maria Martins, 49 York Way Court; Nigel Taylor, 45 York Way; Maggi Mahoney, 46 York Way Court; Tanya Pierce, 19 York Way Court.

13. Save for Sandra O’Neill, all the other residents who provided evidence in support of the Star live further away from the premises than Lorraine Gibney, Michael Sweeney and Agnes Fogbohunge. I also note that although Maggi Mahoney makes no complaint there was a complaint from Thomas Mahoney, of the same address, to LBI on 16.03.13 at 01.26 hours in relation to very loud music from the Star.

Other evidence from LBI

14. Terri Lane, manager of the Licensing Team at LBI, and Janice Gibbons, Service Manager for Commercial Environmental Health and Licensing and Emergency Planning at LBI both gave evidence. Janice Gibbons perception was that the management failed to come up with solutions and she had to take a more active role and prompt them with suggestions, such as using a different door supervisor company. She said that they had ‘got there in the end’ but it had been a ‘long and tortuous process’. There had been improvement but this was against a long history of complaints, two reviews and other meetings.

15. Monitoring by the Noise Patrol and Anti-Social Behaviour Teams of LBI:

- a) [p301-303 of the Respondent’s bundle] Log of visits by the teams and complaints to LBI between 05.11.11 and 21.10.12. No concerns were noted during the proactive visits.
- b) [p307-308 of the Respondent’s bundle] Log of visits by licensing officer. Concerns were raised regarding 25.08.12 at 02.05 hours when over 100 people were observed outside the premises with loud noises, play fighting, urinating, intoxicated customers, limited door staff and staff/management not moving people on. It took until 02.35 hours for this to be cleared.

c) At the request of the court the LBI produced a schedule of visits made by the noise patrol and anti-social behaviour teams of LBI between 03.11.12 to 26.05.13. There have been 42 visits, mostly at the weekends and in the early hours of the morning. None of these visits coincided with the dates Michael Sweeney has complained about or the time of Lorraine Gibney's complaint. It appears that on 14.04.13 there were some concerns about the number of customers still in the premises and been dispersed after 01.30 hours.

16. From January to September 2012 the Licensing team received complaints on eight occasions from residents. On all of these occasions Mr Sweeney complained. On three of the occasions there were complaints by other residents. Since the last review the LBI have requested CCTV from the premises when there has been a complaint. They have found no breaches of licence conditions. However, it is important to note that there is no audio on the CCTV and therefore, this does not mean that there was not disturbance for local residents.

Other evidence from the Appellant

17. Steve Macri, the Designated Premises Supervisor:

- a) The management had tried to maintain good relations with the local community, inviting them to meetings with the management and by attending meetings of local resident associations. They have provided residents with a mobile number for contacting the duty manager.
- b) They have liaised and worked with the licensing authority, being proactive regarding policies and solutions.
- c) He accepted he had not provided a comprehensive response to the complaints raised in Lorraine Gibney's review. However, they had implemented a dispersal policy which, upon their invitation, was incorporated into the license conditions.
- d) They have made two changes to their SIA door supervisor providers in September 2012 and January 2013.
- e) They have a risk assessment policy in relation to promoted events and have declined many events that they deem unsuitable.
- f) He explained that if people were waiting for taxis they had been advised by the licensing officer to keep them inside the premises even if it is after 02.30 hours.
- g) He accepted that historically there had been some problems and that policies had taken time to 'bed down' but considered that these were resolved now.

18. Robert Hives, the director of Electric Star Ltd and overall manager for the premises, gave evidence.

19. Torben Anderson prepared a report on behalf of RBA Acoustics for the Appellant in relation to noise monitoring on to occasions 15/16.02.13 and 25.05.13. There were no significant findings re noise. This evidence carries little weight as it only relates to two nights and the visits were prearranged and known to management.

Submissions by the parties

20. Summary of the main submissions on behalf of the Respondent:

- a) The conditions imposed were reasonable and appropriate, not disproportionate, given the history of problems and warnings and reviews since this management took over.
- b) Although there has been improvement, there remain problems even whilst the appeal has been pending.

21. Summary of the main submissions on behalf of the Appellant:

- a) Capacity:
 - This is only to do with fire risk.
 - There was no discussion at the Sub-Committee regarding the significance of capacity.
 - There is no rational to the reduction in capacity.
- b) Even the best run premises can experience the occasional problem and some disruption as customers leave the premises.
- c) There has been substantial improvement such that, even if the reduced opening hours were appropriate at the time of the Sub-Committee hearing, they are not appropriate now.
- d) There will be a financial burden on the premises if the hours and capacity are reduced. I note that no evidence was presented to support this.
- e) This has been a resident led complaint by Michael Sweeney who has a particular agenda and, therefore, his complaints should be assessed with care.

Conclusions

22. I find that local residents have suffered noise disturbance in the early hours of the morning due to anti-social behaviour by customers of the Star. This is mostly of short duration but sufficient to wake them and disturb them at night. Although Mr Sweeney has an agenda, I find that he has suffered genuine disturbance. Some of his complaints are supported by video footage. There were incidents in June, July, August and September 2012. Complaints were received by the LBI between January and September 2012. These were not just from Mr Sweeney.
23. I find that incidents have continued in 2013. There were incidents of noise disturbance in January, March and April 2013. In particular there were incidents on 7th, 14th and 21st April.

24. This is not a situation of a well run premises suffering the unlucky occasional incident. This is a management team that have been unable to prevent public nuisance when customers use the outside area and disperse. The disturbance during dispersal is not regular but it is repeated and is more than the minimal disruption that is inevitable for any licensing premises. On occasions it is due to large groups of people outside the premises at the time the premises is closing. The problems have been ongoing since 2011.
25. The disturbance has repeatedly occurred after 02.30 hours when the premises should be clear. The management appeared to have the attitude that the final 30 minutes was 'drinking up time' rather than the time to clear the premises and ensure that all the customers have dispersed.
26. The management appear to put the main responsibility for the failure on the door supervisors and have tried to resolve the problem by changing their door supervisors. However, given that the licensing conditions require the duty manager to supervise dispersal and for the management to be more actively involved in seeing customers off the premises, responsibility must lie with them.
27. Further conditions on the licence would not achieve the objective of preventing public nuisance.
28. I do not accept that the issue of capacity of a venue is only a matter of fire risk. It is also a matter of what is appropriate for the type of venue and the ability of the management to deal with the numbers of customers.
29. The changes to the licensing hours and the reduced capacity are appropriate, reasonable and proportionate responses. It seeks to prevent disturbance to local residents by making the numbers leaving the premises more manageable for the management and also to prevent disturbance at such a late hour.
30. The appeal is refused and the decision of the Licensing Sub-Committee is upheld.

District Judge Crane

11th June 2013

A handwritten signature in black ink, appearing to read "DT Crane", with a horizontal line underneath it.