

**LEL CLUB, ST IVES
LICENSING APPEAL****(Report by Head of Administration)****1. Introduction**

- 1.1 The Committee's attention is drawn to the outcome of the first appeal against a decision by a Licensing Sub Committee at a hearing under the Licensing Act 2003 and the guidance that can be derived in respect of future hearings

2. The Case

- 2.1 At a hearing held on 31st August 2005, a Sub Committee refused an application by the LEL Club in St Ives for an extension of hours until 4.00 a.m. on Thursdays to Sundays inclusive by way of a variation of a premises licence that was submitted at the same time as an application for conversion. The application had attracted representations from persons living in the vicinity of the premises but none had been received from the Police or any other responsible authority. The Sub Committee formed the conclusion that the evidence supported the genuine concern and nuisance experienced by the interested parties and that the applicant had failed to demonstrate measures that would alleviate the problems. An extension of the licensing hours would extend the period of nuisance and therefore failed to meet the licensing objective for the prevention of public nuisance.

- 2.2 The appeal against the Sub Committee's decision was based upon six grounds -

- the hearings procedure was unfair in that the fact that each party was allowed an equal time to present its case discriminated against the applicant;
- the Sub Committee failed to have proper regard to the nature of the application and the operating schedule;
- the Sub Committee failed to take proper account of the measures implemented by the licence holder to meet the licensing objectives
- the Sub Committee gave too much weight to the written representations;
- the Sub Committee gave too much weight to the oral representations at the hearing; and
- the Sub Committee failed to take account of the fact that no representations had been received from the Police and that the premises had remained open until 4.00 a.m. on bank holidays in previous years without representations by the Police or licensing justices.

3. The Appeal

- 3.1 The appeal was heard de novo by 3 Huntingdonshire Magistrates sitting at Peterborough Magistrates Court on 13th December 2005.
- 3.2 It was argued by the appellant's Solicitor that the Council had failed to implement the concept and implications of the legislation in the way in which the hearing had been conducted and a decision reached. Reference was made, at length, to the terminology used in the decision letter, notwithstanding that it was accepted that the proper course of action for the Council's procedures to be challenged was by way of judicial review.

3.3 The Council called two local residents to give evidence about the problems experienced by persons living in the vicinity of the premises. The licence holder and premises manager appeared as witnesses for the appellant.

4. The Decision

4.1 After hearing evidence and representations for almost 4 hours, the Magistrates retired for over 1 hour before announcing their decision to reject the appeal and uphold the decision of the Council. In their reasons, the Magistrates acknowledged that the premises were well run and that the management had taken what action they could to prevent any nuisance being caused to interested parties by customers of the Club. However, the Magistrates found evidence of public nuisance and described as basic common sense the fact that the problems were caused by customers of the LEL Club. They did not accept that a solution could be identified in the short term and that an extension of hours would only add to the major problems experienced by the interested parties. The Magistrates did not address the issues raised by the appellant's Solicitor in terms of the Council's procedures.

5. Conclusion and Recommendation

5.1 It is clear that the Council's procedures were not questioned by the Magistrates, although care does need to be exercised in the wording of the reasons for a Sub Committee's decision and the notification letter to an applicant. Notwithstanding the standard of management of licensed premises, the Magistrates found that the behaviour of customers outside premises can be regarded as public nuisance and taken into consideration if there is evidence that this is causing problems for interested parties living in the vicinity.

5.2 The Committee are

RECOMMENDED

to note the content of this report and welcome the decision of the Magistrates.

Background Papers

LEL Club, St Ives file held under the Licensing Act 2003

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