

**EXETER CITY COUNCIL (Licensing Authority)
LICENSING ACT 2003**

NOTICE OF DETERMINATION

Application under Licensing Act 2003 section 34 for the variation of a premises licence in respect of a premises Arena, 1 Summerland Street, Exeter EX1 2AZ

Decision of the Licensing Sub-Committee sitting at the Civic Centre Exeter on Wednesday 25 August 2010 at 0930hrs, convened under Licensing Act 2003.

Councillor N Shiel (Chairman), Councillor Mrs H Sterry and Councillor Mrs M Danks

In the presence of the Principal Licensing Officer Ian Ley (IL) and the Licensing Solicitor Elaine Kale (EK)

The meeting commenced at 0935hrs adjourned at 0940hrs reopened at 0955hrs and closed at 1035hrs

In attendance for Luminar Gems Limited (the Applicant) were Andrew Grimsey (AG) Solicitor from Poppleston Allen Solicitors and Leanne Goddard (LG) the Designated Premises Supervisor and for the Interested Party Sarah Challis (SC) who had made written representations was Gordon Reid (GR).

Application

The Applicant applied for the variation of the premises licence in the terms set out at pages 3 – 9 of the Operating Schedule which accompanied the application.

The licensable activities to be varied were as follows:

- (C) Indoor Sporting Events;
- (D) Boxing or Wrestling Entertainments;
- (G) Performance of Dance; and
- (M) Supply of Alcohol

and the licensing hours applied for in respect of each activity were:

Fridays 1100hrs - 0300hrs; and
Saturdays 1100hrs - 0300hrs

Application was made to vary the hours the premises are open to the public as follows:

Friday 1100hrs - 0330hrs; and
Saturday 1100hrs - 0330hrs.

In addition the Applicant applied to remove the conditions requiring alcoholic and soft drinks to be served in toughened glasses and requiring glass bottles not to be passed to customers and all conditions under the Public Entertainment Licence (embedded restrictions, attendance, marking of doors, smoking, hypnotism, maximum number of persons, striptease entertainment and Licensing Act 1964 embedded restrictions).

Prior to the commencement of the hearing documents were submitted late by the Applicant, namely a copy Dispersal Procedure for Arena, Exeter, a copy Neighbours' Charter for Arena Exeter and two aerial maps entitled "Marshals Patrol" and "Rubbish Patrol". The hearing

was adjourned to allow GR the opportunity to consider these documents and when the application was reopened there were no objections to the submission of these documents raised by GR.

AG explained the nature of the application. There had been discussions with GR and SC both this morning and prior to the start of the hearing when there had been contact with LG. AG said there were effectively three parts to the application. Firstly, the removal of the public entertainment licence conditions in respect of which there were no representations and upon which he would not dwell. Secondly, the removal of the conditions relating to toughened glass and glass bottles which had been agreed with the police and again on which he would not dwell. Thirdly, the concerns raised by SC and GR which would be the issue for the hearing.

AG referred to the fact that the premises were just within the area covered by the Cumulative Impact Policy (CIP) but argued that this was not invoked because it had not been mentioned specifically in relation to the representations made.

LG confirmed the present trading hours and opening times and explained that the premises were open longer when the students were in Exeter. This was reference to the Exeter University students aged between 18 and 22.

The music played was described by LG as commercial chart music. In the past they had used an event promoter who played hard dance music. It had been decided that this was not in line with what was required at the premises and from now on the music would be commercial and not hard dance.

LG confirmed that there had been no issues with the Licensing Authority or with the police and in general they had a good working relationship.

IL confirmed that the only cause the Licensing Authority had to go to the Arena was during routine licensing inspections and not in respect of any enforcement action.

LG had been at the premises since Arena opened in 2007 and was in charge of complaints. LG was aware of complaints relating to noise at the premises and advised the Licensing Sub-Committee that she had confirmed the number of complaints with Exeter City Council Environmental Health Protection Unit. There were four complaints in total over the last three years relating to noise nuisance from the premises. There were two complaints in June 2008 and it was believed that these arose from the same incident. There was one complaint in October 2009 and one complaint in April 2010. It was believed that the last complaint arose from the event for which the promoter had been hired. LG confirmed that this was the totality of the complaints and there were no other complaints relating to noise on the record.

LG explained the Applicant's Noise Policy and said that noise was actively monitored. Once a month tests would be taken around the premises and there was engagement with residents in areas surrounding the premises. LG explained her awareness of the residential accommodation in the vicinity of the premises. LG then explained her response to the complaint from GR and SC stating that she had apologised on receiving the complaint late at night and had offered to turn the music down. LG confirming that she now had complete control over the music in the premises and that the complaint had occurred when the private promoter had been hired. LG stated that she had more control now.

There was discussion about the Neighbours' Charter and about how the relevant telephone numbers might be circulated within the vicinity of the premises.

On being invited to seek clarification on any points GR stated that management from the premises should come to his house late at night to experience the noise nuisance from there.

In response to a question from Councillor Sterry, LG confirmed that the cut off time for entry was 0100hrs where the premises were open to 0300hrs.

In response to a question from Councillor Danks about the Neighbourhood Charter distribution LG confirmed that it could be put through letterboxes in the vicinity. Further LG confirmed that there was a number for contact in the early hours of the morning. LG confirmed that the capacity of the premises was 750 and that 0100hrs was the peak trading time.

Further, in response to Councillor Danks' question LG confirmed that the extension to the opening times was needed for commercial reasons. All other competitor nightclubs had the same licence and remained opened until 0300hrs on the nights required. LG also stated that dispersal would be better if the opening times were later on Friday and Saturday nights.

EK advising the Licensing Sub-Committee that there was no requirement for the applicant to justify the application for variation it was for the Licensing Sub-Committee to weigh evidence in support of representations and determine whether as a result of those it was necessary or proportionate for them to exercise their powers.

Respondent

GR confirmed that he resided in Codrington Street with his partner SC who had made written representations. They often experienced music booming straight into the attic bedroom in their house. As a result they had now had to move to one of the first floor bedrooms. GR stated that Sundays were a big problem and all of the nights during the week in particular Tuesdays when they were kept awake by music.

GR wondered whether the Neighbours' Charter might be printed and distributed from Clifton Road towards the Arena. GR stated there were other complaints although those people had not come forward today.

Councillor Sterry asked for clarification of the statement that the premises are open seven nights a week when the Applicant had stated only five nights. LG confirmed that the premises were closed on Wednesdays except during Fresher's week and on Sundays except Bank Holiday Sundays. Councillor Sterry asked whether the noise could be coming from elsewhere and there was discussion as to other noise emanating from premises above Kwik Fit in Summerland Street.

GR was given the opportunity to sum up but stated that he had nothing further to add.

AG in summing up said that the company was a responsible operator who reacted to detailed complaints. AG stated there was no evidence and that the complaint in question today was an isolated issue.

The Licensing Sub-Committee completed it's deliberations at 1030hrs.

The Decision

In determining this application the Licensing Sub-Committee considered all the evidence before it both written and oral and took into account all matters it is bound to take into account in particular the following:

- Licensing Act 2003 (section 34)
- Statutory Guidance March 2010
- Exeter City Council Statement of Licensing Policy January 2010
- Human Rights Act 1998

The Licensing Sub-Committee determined that there was no sufficient evidence presented to it on the application that justified the exercise of its powers to impose conditions or refuse the variation applied for and accordingly the variation was granted as applied for.

The Licensing Sub-Committee recommended that the Premises Licence Holder distribute the Neighbours' Charter to confirm the veracity of their claim.

Right of Appeal

All parties are reminded of their right to appeal to the Magistrates' Court against this decision by virtue of (Schedule 5) section 181, paragraph 4 of the Licensing Act 2003. Any appeal must be made within the period of 21 days beginning with the date on which you are notified of the decision appealed against.

Appeal is commenced by a notice addressed to:

The Clerk to the Justices, Central Devon Magistrates' Court Office, Southernhay Gardens,
Exeter EX1 1UH Telephone 01392 415560

Parties are advised to contact the Court Office to check the form of notice required and the fee payable.

Date of notice: 25 August 2010

Principal Licensing Officer

