

**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 known as Orca, 155 Fore Street Exeter EX4 3AT

Decision of the Licensing Sub-Committee sitting at the Civic Centre, Exeter on Thursday 12 July 2012 at 1400hrs, convened under Licensing Act 2003.

Cllr M Macdonald (Chair), Cllr Choules, Cllr Robson

In the presence of the Senior Licensing Officer Phillippa Lane (PL) the Licensing Solicitor Elaine Kale (EK)

The hearing commenced at 1500hrs and closed at 1530hrs

In attendance for Orca is Serhat Seckin (the Applicant) and for the Responsible Authority, Devon and Cornwall Constabulary is John Bean, Licensing Officer (JB).

The Applicant applies to vary the premises licence by removal of the conditions in Annexe 3 requiring a door supervisors to be in attendance during licensable activities, in accordance with section 21 Licensing Act 2003 and membership of the Exeter Businesses Against Crime (EBACs) radio alert system.

The Chair advised as to the procedure for the hearing and the parties confirmed that they understood the procedure.

Application

The Applicant attends and states that the premises has operated with 1 door supervisor in accordance with the premises licence. The Applicant states that the door supervisor has had no trouble to deal with and the premises staff is capable of dealing with any problems that may arise. The premises is small and can hold only ten or fifteen customers at a time. The door supervisor spends much of his time sitting in a chair watching outside. In response to the Licensing Sub-Committee's question the Applicant stated that he could rely on help from neighbouring premises in an emergency and that business in Fore Street was not as brisk as it had been. The Applicant said that membership of the EBACs system had been of little value. The business operators in that area helped one another out in any event.

Representations

JB states that the conditions were attached following a hearing. Since then, there had been no reported incidents at the premises

Before retiring to deliberate, EK advises the Licensing Sub-Committee that no action by the Committee is warranted unless it is necessary to promote the licensing objectives and that the Licensing Act 2003 expects licensable activities to be restricted only where that is necessary to promote the four licensing objectives. If action is necessary it must also be proportionate based upon the evidence presented to the Committee during the application. Therefore, there must be some rational evidential basis for a Committee to take action. That basis can include direct first

hand evidence of crime and disorder at the premises in question, second hand hearsay evidence of crime and disorder inside or outside the premises in question, or local knowledge of the Committee.

The Decision

In determining this application the Licensing Sub-Committee considers all the relevant evidence and information presented to it both written and oral, and takes account of all the matters it is bound to take into account, in particular the following:

- . Licensing Act 2003 (Section 34)
- . Statutory Guidance October 2010
- . Exeter City Council Statement of Licensing Policy January 2011
- . Human Rights Act 1998
- . any equality and diversity considerations

The Licensing Sub-Committee finds that there have been no incidents of crime and disorder or public nuisance arising at the premises and notes JB's submission that he can offer no evidence that warrants the exercise of their powers under the Licensing Act 2003.

The Licensing Sub-Committee determines that there is not sufficient evidence presented to it on the application that justifies the exercise of its powers to modify conditions or refuse the application for variation either wholly or in part and therefore grants the variation as applied for.

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, North and East Devon Magistrates Court Office,
Southernhay Gardens, Exeter, EX1 1UH Telephone 01392 415300

Parties are advised to contact the court office to check the form of notice required and the fee payable.

Date of notice 21 August 2012 Principal Licensing Officer

