

Southend-on-Sea Borough Council

Report of Director of Technical & Environmental Services
to

Licensing Sub-Committee (C)

on

31st January 2005

Report prepared by: Philippa Bradwell

Agenda
Item No.

**Smithy's Public House,
35 Eastern Esplanade, Southend-on-Sea
Application for the Variation of Public Entertainment Licence**

A Part I Public Agenda Item

1. Purpose of Report

- 1.1 This report considers an application by the licensees of Smithy's for the Variation of the Public Entertainment licence held for these premises.

2. Recommendation

- 2.1 **The Sub-Committee will wish to be satisfied (having regard to the proximity of residential accommodation) that the proposed additional usage of the premises can be so conducted as to minimise the potential for disturbance in the area. The Sub-Committee will also wish to give consideration to the Police objections.**

- 2.2 **Should Members be minded to approve the application in principle, it is requested that the variations be subject to:**

a) **The satisfactory provision of all items as detailed in paragraph 9.2 of this report, and**

b) **The submission to and approval by the Director of Technical and Environmental Services of a scheme of acoustic insulation and sound control measures to Smithy's Public House and the satisfactory completion of these works, and**

c) **The submission to and approval by the Director of Technical and Environmental Services of appropriate managerial measures designed to reduce so far as is reasonably practicable disturbance to residential occupiers. This to include measures to obviate disturbance from the use of outside drinking areas.**

d) **The condition that the main activity of Smithy's Public House to remain as a public house.**

3 Background

- 3.1 The application premises are located on the main seafront road leading between Southend and Shoeburyness. The premises are situated towards the end of the main seafront entertainment area. The properties to the rear are predominantly residential and approximately 50 yards to the east is a run of terraced residential premises.

- 3.2 The application premises comprise a public house. The nightclub part of the building, known as 'Dreams', is not part of the present application.

- 3.3 The public house has been operating as such for many years. In August 2002 representation was made by the current owners of Smithy's Public House that Karaoke activities had been taking place for several years prior to when the current owner/occupier took possession of the premises.
- 3.4 Following completion of works in December 2003 a Public Entertainment licence was granted for the Public House under delegated authority. This set out the following conditions:
- a) limited operating hours of 10am to 11pm Mondays to Saturdays and 10am to 10.30 pm on Sundays
 - b) customer capacity limited to 100 persons
 - c) Entertainment to be provided for a maximum of 5 days per week
 - d) Entertainment limited to Karaoke
 - e) Licensee to take all reasonably practicable steps to ensure departing patrons do not cause nuisance or annoyance to residents or passers by.

The Police raised no objection at that stage.

4 Proposals

- 4.1 The application is to vary the Public Entertainment licence for the public house as follows:
- to extend the terminal hour of the Public Entertainment licence from 11.00 pm to 1.00 am on Thursdays, Fridays and Saturdays and from 10.30 pm to 12.30 am on Sundays.

The applicants do not seek to vary the capacity in the premises.

- 4.2 Members will be aware that a similar application (which also contained proposed changes of hours for Dreams) was considered and refused by the Licensing Committee on 16th January 2004.

5 The Liquor Licensing Position

- 5.1 Smithy's Public House has an On Licence allowing the sale of intoxicating liquor up to normal licensing hours i.e. 11.00 pm Mondays to Saturdays with 20 minutes drinking up time and 10.30 pm on Sundays with 20 minutes drinking up time. The Public Entertainment licence now sought would be a legal pre-requisite to the grant by the Licensing Justices of a Special Hours Certificate. Such a certificate allows for the extension of permitted hours for the sale and consumption of alcohol. If this were subsequently to be granted, it would be subject to the same terminal hour as specified in the Public Entertainment licence, together with a 30 minute drinking up time at the end of the trading period.

6 Consultation with Surrounding Occupiers

- 6.1 A consultation letter was hand delivered to 57 properties within the surrounding area seeking comments on the application.
- 6.2 Five letters of objection have been received as a result of the consultation exercise, all from local residents. A petition has also been received with 14 signatories. 5 of the signatories of the petition have also sent in separate letters of objection.
- 6.3 Copies of these documents will be made available to the Sub-Committee.

7. Consultation with Police

- 7.1 The Police have raised formal objection, and will present evidence specific to the premises. The Police will present witnesses at the hearing, and will have legal representation.

8. Control of Noise and Disturbance

8.1 Between July 2003 and November 2004, a total of seven noise complaints have been received in relation to Dreams (not part of the present application) or Smithy's. In some cases, the complaint does not identify specifically the part of the premises to which the complaint relates. Although a number of the complaints listed below and the Statutory noise notice detailed in 8.5 relate to Dreams nightclub, the two premises are directly adjoining and are under the same management control. Brief details of the complaints are summarised below:-

- a) 13th July 2003 – Complaint received at 20:45. Visited at 21:00 – Doors to Smithy's PH open. Karaoke ongoing. Customers loud and drinking on pavement.
- b) 24th August 2003 – Complaint received at 20:50. Visit – Karaoke ongoing – not a statutory nuisance.
- c) 6th September 2003 – Complaint received at 17:31. Visit at 18:07- Noise from karaoke at Smithy's - not a statutory nuisance at the time of the visit.
- d) 25th October 2003 – Complaint received at 22:17. Visit at 23:55 – Complaint related to 'Dreams' nightclub not 'Smithy's'.
- e) 19th December 2003 – Complaint received at 23:14. Called complainant at 00:12- no longer a problem.
- f) 28th February 2004 – Complaint received at 22.45 hrs. Visit made at 23.12 hrs. Complaint related to "Dreams" Nightclub not 'Smithy's'.
- g) 1st May 2004 – Complaint received at 10.30 p.m. No visit made as subsequently advised by complainant that music had been turned off.

8.2 In relation to Smithy's Public House the previous committee report in January confirmed that on occasions it had been noted by officers of the Department that the front doors have been left open leading to music being heard outside the premises. The front doors lead directly into the bar area. The licensees have previously been informed of the need to ensure the doors were not to be left open in this way.

8.3 Works have been carried out to the premises which have resulted in the rear door being protected by a large lobby which will act as a sound insulator with the doors closed. This does not impact on noise transmission from the front of the property.

8.4 Should the application be granted, consideration will need to be given to additional sound insulation measures having regard to the proposed later hours. The scheme submitted should cover all likely sources of significant sound emission.

8.5 As a result of a late night inspection of Dreams (part of a joint enforcement initiative with the Police and Trading Standards staff) a statutory noise nuisance was shown to exist. As a result, a formal Abatement Notice was served on the licensees, on 11th October 2004. The works required have to be completed by 11th December. A visit will be made after the compliance date to ascertain whether the works have been completed to the satisfaction of the Department.

9. Technical Requirements

9.1 A letter was sent to the licensees on 8th November 2004 detailing additional matters which would need to be complied with should the application for variation be granted for Smithy's Public House. These were:

- a) The provision of registered door supervisors
- b) The provision of efficient video surveillance equipment to provide full face and full height pictures of patrons as they enter and leave the premises.

- c) The provision of the most suitable toughened glass drinking vessels.
- d) The licensees to take all reasonably practicable steps to ensure bottles and drinking vessels are not taken from the premises.
- e) Full details of events put on by independent promoters to be sent by the licensees to the Local Authority on request or where there is increased risk of disorder or nuisance.
- f) The provision of a written agreement with the licensing authority to cover i) arrangements for door supervisor coverage and ii) procedures to detect and prevent the entry of unlawful items to the premises together with arrangements for the search and seizure of such items.
- g) The provision of a lockable cabinet for the temporary storage of such items seized in accordance with the above.

9.2 The above additional requirements were based upon measures recently developed by this Department in consultation with the Police, as being relevant to late night venues.

9.3 No response has been received from the applicant on these matters.

10. Background Papers

10.1 Consultation letter to surrounding occupiers.

10.2 Letters from surrounding occupiers.