

RUNNYMEDE BOROUGH COUNCIL

HEARING DECISION NOTICE

LICENSING ACT 2003

LICENSING SUB-COMMITTEE

Applicant: Runnymede Borough Council as responsible authority

Premises: Barley Mow Public House, Barley Mow Road, Englefield Green, Egham, Surrey, TW20 0NX

Hearing Date: Thursday 31 May 2007

Sub-Committee: Councillors P Broadhead (Chairman), Councillor B Relph, and Councillor D Parr

Application:

This was an application for a review of the current premises licence under the terms of Section 51 of the Licensing Act 2003 by Runnymede Borough Council being a responsible authority by reason of exercising statutory functions in respect of pollution of the environment, harm and human health.

Representation:

Representations had been received from Mr Glen Flegg, an interested party who attended the review and spoke for the application, and eight letters received from parties who did not attend, which had been circulated with the agenda, and were against the application.

Attendees:

Mr Glen Flegg - Owner of Byways, Barley Mow Road, Englefield Green, Surrey, TW20 0NX.

Mr Peter Burke, Principal Environmental Health Officer, for the Environmental Protection Division of Runnymede Borough Council

Miss Aileen Baker – Environmental Health Technician

Mr Stephen Anderson - the Premises Licence Holder.

Mrs Anderson - the Premises Licence Holder's wife.

PC Medhurst - Police Licensing Officer for Runnymede.

Mr James Anderson - Solicitor from Poppleston Allen Licensing Solicitors, representing Mr Stephen Anderson.

Mr Derek Seekings - Senior Licensing Officer for Runnymede Borough Council.

Mrs Karolina Barnes - Legal Advisor for Runnymede Borough Council.

Councillor observing – Mr M.T. Kusneraitis

The Hearing:

Mr Burke put forward his submission to the Sub-Committee. Mr Burke submitted that he has received numerous complaints from Mr Flegg of Byways primarily of noise nuisance from children in the garden of the Barley Mow premises and also from karaoke evenings held on the premises late in the evenings and into the night. Under questioning, Mr Burke further revealed that two other complaints had been received from two other persons located within the vicinity of the premises.

Mr Burke asked the Sub-Committee to consider imposing additional conditions in relation to any regulated entertainment so that the level of noise emanating from the premises is not audible at the boundary of the Barley Mow with its nearest neighbour. With regard to the issue of noise emanating from the rear garden of the premises, Mr Burke asked the Sub-Committee to consider imposing appropriate conditions to prevent public nuisance from this noise source also. Mr Burke submitted that since Mr Anderson had erected a new climbing frame and play area for children at the bottom of the pub garden the noise nuisance has increased and intensified. Mr Burke showed photographs of the play area and the common boundary between the properties.

Mr Burke also referred to the witness statements of Mr Davie Walkes and Mr Richard John Brown, both of whom are Environmental Health Officers employed by Inside Housing Solutions Limited. They were requested by Runnymede Borough Council to investigate noise complaints made by Mr Flegg concerning noise from children playing in the back garden of the Barley Mow premises. Both had been of the view the children in the beer garden were sufficiently loud and intrusive as to prevent or disturb the normal enjoyment of Mr Flegg's property and a statutory nuisance.

Mr Burke also played a tape recording made at Mr Flegg's property over the Bank Holiday weekend 4 - 7 May 2007. The recording was played to give a clear indication of the type of noise nuisance that Mr Flegg is experiencing.

The Sub-Committee then heard from Mr Flegg who submitted that he has resided at Byways since 1988 and it has been in the last three years since the present occupiers of the Barley Mow have come to the public house that the noise nuisance has started. The Barley Mow premises is located next door to the Mr Flegg's property, with the main pub premises located to the front of the site towards the Barley Mow Road, with its beer garden to the rear. The property shares a common boundary extending most of the pub's rear garden area.

Mr Flegg submitted that the play equipment in the pub garden has been extended and is being used by children all day and into the evening. Mr Flegg complained that children are climbing onto the trees in the pub garden and onto his garage roof, they are also damaging the fence panels at the end of the pub garden and he has on a few occasions returned home to find children playing in his garden. He believed that children are not being adequately supervised.

Mr Flegg also complained that there had been several occasions when private parties have been held at the premises going on into the evening and through the night causing further noise nuisance.

Mr James Anderson submitted that there was no evidence of public nuisance as there had to be more than one complainant. Since there was only one principal complainant it followed that there were no grounds for review and Runnymede Borough Council did not have the right to exercise its powers under the Licensing Act 2003. The Sub-Committee considered Mr Anderson's argument but decided to hear the review. Having taken advice from their legal representative and Counsel, the Sub-Committee are satisfied that the ground for review is properly made out.

Mr Anderson further submitted that his client's premises is a very well run child friendly and family orientated public house that has never received any complaints regarding noise nuisance or rowdy behaviour from any one other than Mr Flegg. He submitted further that Mr & Mrs Anderson are not in breach of their current licence as the karaoke nights, which had been complained about were private parties held by Mr & Mrs Anderson for their staff and so were not licensable activities even though they were held at the premises. Mr James Anderson refuted that there had been any noise nuisance on any occasion and submitted that all the local residents are content with the management of the premises apart from Mr Flegg.

Mr James Anderson further submitted that Mr Flegg's remedy should be under the Environmental Protection Act 1990.

The Licensing Sub-Committee determined to hear the application for review and, having carefully considered the application, the representations made from interested parties, the Council's Policy and Guidance issued under the Licensing Act 2003 determined the application as follows:

All licensable activities currently licensed, together with the relative times to remain unchanged. However, the following Conditions shall be added to the Premises Licence:

1. The beer garden at the premises to be open to under 16s from 11.30am until 7.00pm. The garden to be clear of under 16s thereafter.
2. The play equipment, not including the swings, to be moved from its current position to position A as shown on the plan attached within six months.
3. No children's parties are allowed in the beer garden.
4. Mr Stephen Anderson organise and finance the building of a wall along the boundary between the premises licence holders property and Mr Flegg's property to the style and specifications of the planning permission granted to Mr Flegg or as amended with the agreement of both parties and the Planning Authority within six months to allow for obtaining planning permission and building the wall.
5. To continue to display notices requesting that parents encourage children not to make too much noise and be mindful of residents living nearby.
6. Regular noise supervision to take place by staff in the garden from 11.30am until 7.00pm when children are present.
7. To ensure that the gate located at the rear of the pub beer garden, giving access to a further private garden also owned by the pub, remains locked at all times during pub hours.

Informative:

And in addition, although not a Condition, the licensee by himself, together with his wife or his wife alone to meet with Mr Flegg and any other concerned residents every two months to discuss any potential noise nuisance issues.

Reasons for the Imposition of Conditions:

The prevention of public nuisance and, in particular, noise nuisance.

Appeals:

If the applicant or any person having made a relevant representation is dissatisfied with this decision, then they can challenge the decision by making an appeal to the North West Surrey Magistrates Court at Woking within 21 days of receipt of this Notice.

Dated: 15 June 2007