

RUNNYMEDE BOROUGH COUNCIL
LICENSING SUB-COMMITTEE

LICENSING ACT 2003

HEARING DECISION NOTICE

Applicant: Bin 28 Limited

Premises: Bin 28 Limited, 28 St Jude's Road, Englefield Green, Egham, Surrey.
TW20 0BY

Hearing Date: 9 September 2005

Sub-Committee: Councillors A.J. Davis, C. Knight and P.A. Greenwood.

Application:

This was an application for conversion of the existing Justice's Licence, and variation.

The variation applied for was for an increase in authorised hours and the provision of regulated entertainment and late night refreshment.

The Applicant was represented by Mr Surinder Bains and his wife Pinder Kaur Bains.

A relevant representation was received from the Environmental Health Department of Runnymede Borough Council.

There were five letters of representation from interested parties of whom Mr Mark Sterratt of 26 St Judes Road, Englefield Green attended and spoke.

The Sub-Committee heard from Mr and Mrs Bains that they had purchased the premises some 3½ years ago when it had been in a bad state of repair. Considerable time and money had been expended on the renovation of the premises and it was now somewhere which in their view enriched the atmosphere of Englefield Green and was something that the majority of locals were happy to have there. In their view it had also been the catalyst for other improvements and they referred to a number of other restaurants in the near vicinity. It was confirmed that Bin 28 was primarily a restaurant but one to which persons who simply wanted to have a drink were welcome.

The Applicant desired to provide facilities in the patio area to the rear for persons throughout the day and into the evening. In addition it was proposed that the basement area should have live music. Mr Bains confirmed that it was not intended to amplify the music as this was not something his customer base would want. He confirmed that the Applicant was content to comply with conditions and was fully prepared to carry out soundproofing measures.

Mr Bains was at pains to refute suggestions of anti-social behaviour by patrons of his restaurant. He acknowledged that students did come to the restaurant but that generally given the nature of the restaurant the customers were a mature responsible group of people.

Mr Bains referred to other similar establishments in the area which had applied for or had the benefit of similar hours and the provision of outside areas. His plea and that of Mrs Bains was for a "level playing field".

When questioned by members of the Sub-Committee Mr Bains was not able to evince any clear intention as to what was proposed by way of provisions for dancing. He confirmed that

the basement area was approximately 6 metres by 5.5 metres and provided between 25 and 28 covers.

Gail Birkett for the local Environmental Health Department confirmed that the Environmental Health Department would like to see live music and dancing in the basement separated from the first floor, windows to be kept shut from 11 p.m., there to be a lobby on the exit door from the basement, controls on the use of the rear garden and the extractor system turned off at a reasonable time.

Mr Sterratt advised that he was the owner occupier of his property which was one removed from the premises. He told the Sub-Committee that noise from the premises disturbed him and although he could put up with the noise to some extent was concerned as to the effect it would have on him and his neighbours if later hours were approved. He had particular concerns with the noise from the extractor fans, the noise from conversations in the restaurant when the doors were open, noise from conversations had by patrons when utilizing the patio area to the rear and seating to the front, when smoking cigarettes on the pavement, the noise of patrons leaving, their conversation and the sound of motor vehicles and on occasion from the music. He stressed that Bin 28 Limited was not complying with current planning conditions.

The Sub-Committee had been appraised of the conditions which had been imposed on the Applicant at the time planning consent was given for the erection of the three-storey rear extension to the existing premises and the change of use of the ground floor and basement from retail shop to food and drink use. The Sub-Committee was particularly concerned that conditions relating to the approval and installation of equipment for the ventilation of the premises and extraction of fumes, the times of opening and the upgrading of acoustic performance of the party ceilings/floors/walls and windows and ventilation system and the use of the premises for live entertainment appeared not to have been complied with. In addition it was noted that a requirement that both Mr and Mrs Bains should attend a course of instruction as required by the Licensing Justices did not seem to have been complied with. Mrs Bains confirmed that she had attended a course but failed it.

The Sub-Committee in coming to their decision on this application stress that whilst mindful of the other premises referred to by Mr Bains, every application is treated and determined on its own particular merits and having regard to the licensing objectives. Further, the decision of the Sub-Committee cannot lawfully be implemented until the Applicant has the written approval of the Planning Authority.

The Sub-Committee was further concerned to ensure that the soundproofing and ventilation measures required by the Planning Authority were agreed and put in place before the premises license as varied becomes effective, assuming always the written approval of the Planning Authority can be obtained.

The Sub-Committee were satisfied that noise arising from the premises, the encouragement of smoking outside the premises, but near to neighbouring properties, and the arrival and departure of customers had the potential to cause nuisance.

Having considered the application, having heard from Mr and Mrs Bains and Mr Sterratt, having considered the Licensing Act 2003 and guidance issued under it and the Authority's own policy the decision of the Sub-Committee is as follows:

1. Application for conversion approved.
2. Application for variation approved subject to the following conditions:-
 - (i) The provision of facilities for dancing and performances of dance is refused.
 - (ii) The terminal hour for the supply of alcohol to be 11 p.m. Monday to Thursday and Sundays and 12 midnight on Fridays and Saturday.

- (iii) The terminal hour for the premises to be open to the public to be 12 midnight Monday to Thursday and Sundays and 1.00 a.m. on Friday and Saturday.
- (iv) Late night refreshment, live music and recorded music to be provided to the same hours as allowed for the supply of alcohol.
- (v) The provision of live music and recorded music to be restricted to the basement area.
- (vi) The use of outside areas to be restricted to the following times:
 Front of premises: 8.00 a.m. – 9.30 p.m.
 Patio area to side and rear: 8.00 a.m. – 11.00 p.m.
- (vii) Windows and doors to be kept shut after 11 p.m. and at any time when live/recorded music is being played.
- (viii) Notices to be displayed prominently adjacent to all exits requesting patrons to leave quietly and with due consideration for neighbours.
- (ix) The extra hours, provision of late night refreshments, live music and recorded music as approved to come into effect at such time as the ventilation and sound attenuation measures as required in terms of the planning permission are resolved to the satisfaction of the Planning Authority and the Environmental Health Department.
- (x) The use of the outside rear areas for smoking by patrons is only permitted until 11 p.m. and is to be discouraged from the front of the premises and in particular from the pavement to the front of adjoining properties. Appropriate signage is to be provided to request smokers to consider neighbours and to not smoke outside neighbouring properties where the noise from conversations they may have could be the cause of nuisance to the occupiers of neighbouring properties.

Reasons for imposition of conditions:-

The prevention of public nuisance:

1. The Sub-Committee was not satisfied that adequate or proper consideration had been given to the provision of facilities for dancing and were not satisfied that in any event the basement space was sufficiently large to properly accommodate dancing.
2. The conditions as to hours of operation and the use of outside areas are imposed to ensure that public nuisance is not caused to neighbours and in providing for a one hour "drinking up" time the Sub-Committee is hopeful that there will be an orderly decanting of patrons over a reasonable period of time so as to minimise noise nuisance to neighbours.
3. In order to minimise noise nuisance to neighbours patrons smoking outside should be discouraged from congregating in close proximity to neighbouring properties. There is ample open air space for smokers to go to across the road from the premises.

Appeals:

If the Applicant or any person who made relevant representation wishes to appeal against this decision an appeal must be made to the North West Surrey Magistrates Court at Woking within 21 days of the date of receipt of this notice.