

Wiltshire Council

Western Area Licensing Sub Committee

17 January 2014

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**Consultation on a Variation of a Premises Licence Application  
Licensing Act 2003**

**Harvey's Nightclub and Sports bar Church Street Trowbridge**

I refer to the above licence application. Following consultation with the applicant I find that at present the application does not adequately promote the licensing objective of Public Nuisance.

**1. My Experience**

1.1. I am a Senior Environmental Health Officer and have been employed by Wiltshire Council for five and half years. I am a member of the Chartered Institute of Environmental Health and have been working in environmental health and licensing in Local Authorities for 15 years. I have a post graduate diploma in Acoustics and Noise Control engineering. I am a volunteer for Mendip District Council and have worked as a noise team leader at the Glastonbury Music Festival for the last 10 years.

**2. Location of the building (Photographs of the outside with street map overhead)**

2.1. The Licensed premise is located at 35 Church Street Trowbridge (**see Locality Map**). There are two other licensed premises located on Church Street on the opposite side of the road to the proposed application, The White Swan and the Black Pearl (Photograph 4 , 7 and 8).

2.2. The White Swan has a premises licence that allows it to hold live music through till midnight and recorded music till 1.30 a.m.

2.3. The Black Pearl has a premises licence that allows it to hold live and recorded music till 00.00 midnight.

**3. Residential accommodation and planning history**

3.1. The licensed premise is located in the same building as the New deli Ltd (ground floor), two flats 36 and 37(rear first and second floor) and a flat no 38 that is situated above the premises and shares a fire escape with the premises (**Photograph 6, 7, 11, 12, 13, 14, 15 and 16**). The front of the premises has 9 single glazed windows which have been acoustical sealed and face out onto Duke Street and Church Street (**Photograph 1, 2 and 3**).

3.2 In the absence of a technical report provided by an acoustic engineer to confirm fully the acoustic properties of the structure, I am unable to determine the suitability of the structure to prevent music noise escaping the building and being a public nuisance to adjoining properties.

3.3 The Environmental Protection team have consulted with the Developmental Control Department on the 8<sup>th</sup> of January 2014; which indicates that the planning permission

status for the first floor is unclear. There have been several planning applications for the premise. The premise was granted planning permission as a night club in 1977. A subsequent planning application (reference 04/01933/FUL) was made to West Wiltshire Council in 2004 which proposed 11 flats within the curtilage of the building. This permission was granted however only three flats were developed and the first floor remained undeveloped. A legal position has been requested from Wiltshire Councils Planning Enforcement team to confirm the current planning status of the building. As it is unknown as to whether we are dealing with a residential development or a mixed use residential and nightclub use. Unfortunately no legal position was available at the time of the production of this report.

#### **4 Consultation History**

- 4.1** The Environmental Protection department was not consulted prior to the submission of the variation of the premises licence. A meeting was held at the club on the 10<sup>th</sup> of December 2013 between the applicant and the officers of the Environmental Protection team. Advice was given with regards to concerns that the venue would give rise to public nuisance as a result of music noise being transmitted to the adjoining flats and properties within the vicinity of the nightclub.
- 4.2** At this meeting the applicant presented us with a series of Temporary Event Notices that had been granted through December 2013. These events were held on the 13<sup>th</sup>, 14<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 24<sup>th</sup>, 26<sup>th</sup> and 31<sup>st</sup> of December 2013.
- 4.3** Acoustic advice was given to the applicant with regards to the windows that were located within the premises. The applicant undertook works to the windows to the front of the building prior to the first night of music.
- 4.4** Susie Vowles (Public Protection Officer) and Damaris Broad (Environmental health Officer) undertook observations on the evening of the 13<sup>th</sup> December 2013 at approximately 23.00 hrs inside the club and in the streets around the venue. The music was only audible at the front of the building when the doors were opened and closed to allow patrons access. The officers accessed the fire escape to the rear and the music could be heard escaping from the fire door and the windows to the side and rear of the club. The areas of weakness in the structure were pointed out to Mr Harvey
- 4.5** On the 16<sup>th</sup> December 2013, Mr Skinner of 37 Church Street (a flat that adjoins the club) complained to the Licensing team following the music disturbance he experienced from the opening weekend of the club. Susie Vowles (Public Protection Officer) contacted Mr Skinner to discuss his complaint and arranged to undertake night time noise observations at his property on Saturday 21<sup>st</sup> of December 2013.
- 4.6** On the 21<sup>st</sup> December 2013 Noise Richard Francis (SEHO) and Susie Vowles Public Protection Officer) attended Mr Skinner's property at 37 Church Street at 11.55 p.m. and made observations through until 02.00 a.m. on the 22<sup>nd</sup> December 2013. During this visit the music was being played at the White Swan and could be heard in the street, the car park outside No 37 Church Street and inside the lounge and bedroom of No 37 Church Street. In addition you could hear the beat of the bass from the music originating from the nightclub in the bedroom of 37 Church Street. Officers were unable to determine whether the music from the club was a public nuisance at

this time due to the high music levels experienced from the White Swan. The music from the White Swan stopped at 1.00 a.m.

- 4.7** The only music that could be heard after 1.00 a.m. in the bedroom was originating from Harvey's nightclub, the music was being transmitted both through the structure of the property and was airborne. It was deemed that the airborne music was a result of weaknesses in the windows in the entrance stairwell, the double doorway to the club and the fire escape and windows to the rear of the property. The music level experienced by officers within the flats bedroom was at a level where the track could be recognised. In addition the audience could be heard singing along to popular choruses of songs. The music at this level was affecting all the adjacent properties and would make sleep difficult and was considered to be a public nuisance.
- 4.8** On the 30th December 2013 Susie Vowles had a telephone conversation with Mr Harvey. The applicant advised he had undertaken additional sound insulation measures. This involved additional plaster boarding and insulation to one of the flanking walls adjacent to the second floor flat. Mr Harvey asked if we could visit his premises once again to assess the noise prior to the hearing.
- 4.9** Richard Francis (Senior Environmental Health Officer), Steve Hunt (Environmental Health Officer) and Susie Vowles (Public Protection Officer) visited the nightclub on the evening of 8<sup>th</sup> January 2013. The occupier of number 37 stated that the work had made an improvement in the levels he experienced within his flat however he said he could hear the bass elements through into the early hours and this was still a nuisance to him.
- 4.9.1** A music level was set at the club with an officer remaining present to ensure the level was not altered at anytime; the two remaining officers went to the adjoining flat 37 Church Street to make observations from the bedroom. The officer at the club used a sound level meter in the middle of the dance floor to act as a guide to what music level (decibel level dB) was being experienced in the venue.
- 4.9.2** The observations were undertaken in the flat, the street and the club. Testing was undertaken by playing different music tracks with varying bass levels. The levels were altered on both the amplifier and the mixing desk. Officers were swapped between the nightclub and the flat in order to make observations and share professional views.
- 4.9.3** When music was played at sound levels in excess of 85 dB(A) inside the club, the music could clearly be heard within the bedroom of the flat, with the bass levels being transmitted readily into the bedroom. At a level in excess of 85dB(A) the music is a public nuisance. When the music level was reduced to a level of 85dB(A) and below the level of music heard within the bedroom was barely audible.
- 4.9.4.** My perception of the music level within the club when the music was set at a level below 85 decibels was that it was too low for the audience to experience the music fully and would impact on their enjoyment. It is known that music noise levels below 90 dB will be unlikely to provide satisfactory entertainment for the audience. I believe that this should be strongly considered prior to the applicant committing additional money into the nightclub as the gains achieved without professional input from an acoustic engineer may be limited and cost prohibitive to the club owners.

## **5. Conclusion**

- 5.1** If this application was for a new nightclub it would require planning permission. Through that process the Environmental Protection team would be consulted and would request that an acoustic engineering report should be produced to assess the suitability of the building due to its mixed use status. In order to ensure that music noise from the night club should not affect the amenity of neighbouring dwellings. An acoustic report would have provided the department with recommendations that would mitigate the effects of the music on the adjacent dwellings. These would have been required to be implemented prior to occupation.
- 5.2** In this case the planning permission for the status of the building is uncertain and the Environmental Protection Team has only been able to make decisions based on their visits and observations. The applicant has held seven music events through the Temporary Event Notice process and at each step through consultation with the Council has undertaken mitigation works through a “trial and error” methodology without any assistance from an independent professional in the field of acoustics. The measures that have been undertaken to date do not prevent the music from being a public nuisance and conditions are required to protect the licensing objective of public nuisance as a result of noise.

## **6.0 Recommendations**

- 6.1** The Environmental Protection team as a responsible authority object to the grant of this variation of the premises licence as it stands. We wish to make the following recommendations to the licensing sub-committee and believe through their implementation and good management they should reduce the incidents of public nuisance:
1. The music level inside the club is required to be limited to a maximum of 85dB(A) SPL (sound pressure level) at the premises, measured at the centre of the dance floor. This should ensure that the music in the adjoining flats is barely audible; however this may not eliminate all bass elements of certain tracks. This would have to be undertaken through the installation of a music noise limiter with work completed by a competent person.
  2. Live music is restricted to acoustic set only i.e. acoustic guitar, vocalists, singer with backing track with all amplification being passed through the noise limiting device.
  3. Elevate and isolate the bass speakers from the floor with acoustic resilient material and fixings.
  4. All music shall stop at 01.00 hours Friday and Saturday, Monday through to Thursday 23.00 and Sundays 22.30.
  5. No Karaoke.
  6. Fire doors shall remain closed at all times.
  7. Smokers are limited to 10 patrons at a time and are dissuaded from standing in the roadway leading to the car park beneath the adjacent flats.
  8. No smokers are allowed outside the premises after 01.00 a.m.

**Richard Francis**  
**Senior Environmental Health Officer**  
**Environmental Control and Protection (North and West)**

Appendix 1 - Locality Map  
Appendix 2 - Location Photos