

## WESTERN AREA LICENSING SUB COMMITTEE

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**DRAFT MINUTES OF THE WESTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 25 JANUARY 2013 IN COMMITTEE ROOM A - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM SN15 1ER - WESTERN AREA LICENSING COMMITTEE - APPLICATION FOR REVIEW OF A PREMISES LICENCE; TROWBRIDGE CRICKET & SPORTS CLUB**

**Present:**

Cllr Desna Allen, Cllr Trevor Carbin and Cllr George Jeans

**Also Present:**

**Wiltshire Council:**

Kate Golledge (Public Protection Manager, North and West, Safer Communities and Licensing), Maggie Jones and Paul Taylor (Senior Solicitor)

**Responsible Authorities:**

Richard Francis, Senior Environmental Health Officer, Linda Holland, Senior Licensing Officer, Maggie Jones, Licensing Officer, Graham Steady, Public Protection Manager

**Trowbridge Cricket Club:**

Mrs Christine Davies, Mr Colin Poplett and Mr Brian Scrine

**Interested party:**

Mrs T Gates

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**1 Election of Chairman**

Nominations for a Chairman of the Licensing Sub-Committee were sought and it was

**Resolved:**

**To elect Councillor Desna Allen as Chairman for this meeting only.**

## 2 **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 1 – 6 of the Agenda refers).

## 3 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

## 4 **Declarations of Interest**

There were no interests declared.

## 5 **Application for Review of a Premises Licence; Trowbridge Cricket & Sports Club, Lower Court, Trowbridge, Wiltshire BA14 8PX**

**Application by Wiltshire Council Environmental Protection team for a review of a Premises Licence at Trowbridge Cricket & Sports Club, Lower Court, Trowbridge**

The Licensing Officer introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration.

At this point Mr Poplett, representing the Cricket Club, presented a letter to the Chairman, concerning the late submission of evidence by the reviewing Responsible Authority. He told the Sub-Committee that the Cricket Club had requested an adjournment of the hearing in order to get legal representation. This request had initially been accepted on the basis that there were no music events before any reconvened hearing, but was later rescinded, because a live music had been held at the Club on the previous Saturday evening. Mr. Poplett explained that the most recent event had been held on the ground floor and felt that it should be disregarded.

The Licensing Officer clarified that the license for review was for the entire license which covered both ground floor and first floor.

Mr Poplett queried if Mrs Davies was aware of this and the Licensing Officer confirmed that the information was in the paperwork for the agenda.

Mr. Poplett asked that the latest evidence from the Environmental Health Team be disregarded by the Sub-Committee, as the Club had only had a short time to consider it. Mr. Taylor confirmed that it was for the Sub-committee to decide whether or not to take late submissions into consideration and, if so, how much weight to give to such submissions.

In accordance with the procedure detailed in the agenda, the Applicant, the Responsible Authorities and the Interested Parties were given the opportunity to address the Sub-Committee.

Graham Steady, Public Protection Manager (the applicant) asked questions of Richard Francis, Senior Environmental Health Officer, and made the following key points:

- The existing management were, in the view of Public Protection, ineffective.
- The Public Protection team have consistently expressed doubts that the premises are suitable for the provision of amplified music.
- An abatement notice was served by the Council in May 2010 and a breach of that notice was witnessed by authorised officers in August 2010.
- Conditions were agreed with the club in December 2010, prior to the licensing hearing in January 2011, these including installing a noise limiter.
- Public Protection wrote to the club in July 2011 and made recommendations to the club in respect of noise attenuation.
- On 17 May 2012 Public Protection wrote to the club regarding a live music event on the evening of 5 May 2012.
- The club had explained that the reasons for the noise issues at the above event were that the noise limiter had failed due to a power surge.
- On 14 July 2012 Maggie Jones, Licensing Officer, visited the club with Annabel Wilkinson, Environmental Health Officer, the noise limiter was not working and the clubs explanation was that Mr Poplett was on holiday and no-one knew how to operate it.
- On the same occasion sight of the premises log book was requested but it was not available as Mr Ball was out monitoring the sound in the nearby streets.
- On 1 September 2012 Linda Holland, Licensing Officer, visited the club with Susie Vowles (Public Protection Officer), and it was their opinion that the music being played that night constituted a public nuisance due to the distance at which it could be heard.
- Richard Francis wrote to the club on 28 September making them aware that he would be requesting a review and offering to undertake an acoustic assessment of the premises.
- On 13 October and 10 November 2012 noise equipment was placed in the complainant's house in Downhayes Road.

At this point the committee listened to extracts from the above recordings

- The noise recordings were played to a noise consultant who recommended that a further survey should be undertaken. The club did not respond to Mr Steady's request to carry this out.
- The Council requested Industrial Noise and Vibration Centre (INVC) to carry out the survey.
- INVC wrote to the Council with their recommendations and expressed concerns that there may be another sound transmission path.
- Richard Francis wrote to the club on 11 December 2012 enclosing the INVC report and requesting that the Council be allowed access to allow for all the sound transmission paths to be identified.

Members asked for clarification on the following issues:

- Was it possible to bypass the limiter?  
*Yes without proper management*
- How difficult is the limiter to operate.  
*It is just a matter of plugging in a plug*
- Had Maggie Jones subsequently seen the premises log book and was she confident that the sound was being monitored at that time.  
*Some results were presented to the Council*
- Is noise transmission weather-dependent?  
*There is guidance issued regarding which weather conditions measurements can be made in*
- Was the noise only projecting in one direction and if not why was it affecting only one property?  
*There are no properties between the club and Downhayes Road.*

Mr Poppett, on behalf of the Cricket Club, asked the following questions:

- Why was the review called when only one individual had complained?  
*The review was called because, in the opinion of the professional officers, there was evidence of a public nuisance being caused.*  
  
When the expert listened to the sound recordings did he have to do anything to them?

*Yes it was detailed on page 114 of the agenda papers.*

- The roof is not a weak point as suggested by Public Protection.

Key points raised by Mrs Gates (Interested party) were:

- Mrs Gates stated that the recordings played to the committee replicated what she heard in her bedroom
- If the Council believes the club has breached the conditions on the license would there be any point in revised conditions if they don't abide by the ones they already have.
- The club is wooden built and noise from the premises travels to Palmer Road, Seymour Road and Downhayes Road although her property tends to shield others in Downhayes Road.
- When live bands are playing music from the club can be heard in all rooms of the house.
- The Council had agreed that the noise from the club constituted a public nuisance and agreed that a way forward with the club was to install the noise limiter.
- At the Western Area Licensing Sub-Committee in January 2011 Mr Poplett had accepted that the club had been the cause of noise nuisance. Conditions were therefore put in place to minimise the impact on neighbours.
- Music events have been held at the club on numerous occasions but the noise limiter has not been used.
- The club had to monitor music in the surrounding area when an event was taking place. Although a representative from the club did indeed visit Downhayes Road he only did so to berate Mrs Gates' family to the neighbours.
- The family were often woken up or prevented from sleeping when a live music event was being held.
- The process of information gathering by the Council has been stressful and intrusive for the family.
- As residents the family have a right to peaceful enjoyment of their home.
- The anticipation of events were stressful on the family and they often tried to go away for weekends to avoid the noise nuisance.
- A letter was sent by Mr Poplett to the neighbours in which he insulted the family and called them liars.

- The club do not believe there is a noise nuisance and are unable to self-regulate.

Members asked for clarification on the following issues:

- What did Mrs Gates feel had changed in 2010?  
*We just started to hear the music more and louder*
- How many times a month were you disturbed.  
*Varies – 18 occasions over the last 3 years.*
- What times of the evening would be acceptable to hear the noise.  
*Not for me to say the levels are set by law*
- Did you contact the club in person?  
*Yes we did but we were sworn at.*

Mr Poplett asked the following questions:

- You mentioned a survey by the club – did you husband do a similar survey two years ago?  
*It was similar we were trying to raise people's awareness.*
- In his survey did he say that we (the club) would be playing live music until 2am every Saturday?  
*He said that you could do that because that is what you applied for*
- You said that I called Mr Gates a liar but he produced evidence at the last hearing which he subsequently withdrew when challenged because it was a lie.  
*You misled us to our neighbours.*

Points raised by Linda Holland, on behalf of the responsible authority were:

- The premises licence holders have demonstrated on several occasions that they have failed to comply with their premise licence, through non compliance with licensing conditions and permitted hours for live music. The licensing authority could seek to prosecute for these offences but this action would not address the core issues, the most likely outcome should the case be proven is a financial penalty on the premises licence holders.

- The decision made by the sub-committee in January 2011 was to impose conditions on the licence and restrict the number of live events to address the concerns of residents and the responsible authority who made representations.
- Following the January hearing, it came to the attention of the licensing officer, Mrs Jones, that events were taking place at the cricket club in contravention of the conditions imposed by the hearing, a formal warning letter was written to the premises licence holder in March 2011. At this time no working noise limiter was in place or had the noise management plan been seen and approved by officers.
- With reference to noise nuisance emanating from the premises she referred to her witness statement and that of the environmental health officers, which demonstrated that the premises licence holders, in her opinion were unable / unwilling to control noise break out from their premises.
- It was her belief that the evidence in front of the sub-committee, established that the licence holder had over a period of several years demonstrated their inability to comply with their premises licence and any conditions contain there in, despite receiving guidance and support from officers of the council over a significant period of time to seek to work with them to address these issue. It also appeared that they did not acknowledge that their activities may be having a negative and detrimental impact on surrounding domestic dwellings.
- The licensing authority had no confidence in the management / premises licence holders ability to comply with the licence as it currently stands. The authority could see no other reasonable conditions that would address the issues raised by the review application and has concerns that any further conditions will also be met with the same response. The Licensing Authority would therefore ask that the committee consider the removal of live amplified music from the premises licence in totality.

Key points raised by Mr C Poplett (on behalf of the license holder) were:

- The club building was upgraded 20 years ago when a double skin was added.
- Mrs Davies and Mr Scrine have worked hard to bring it up to the condition it is today.
- It has already been upgraded to accommodate the Council, for example installation of the sound limiter.
- The club is prepared to do more work but only if it will resolve Mrs Gates' problems.
- The Police don't have any issues with the club.

- There is bound to be noise; if it gets too noisy we stop it but there has to be some give and take.
- We sent a questionnaire to all the neighbours and no-one complained; a lot of them live nearer to the club than Mrs Gates.
- To accommodate Mrs Gates the club is prepared to provide double glazing and do the work required by the acoustic engineer but not if we get more complaints in 6 months time.

Members asked for clarification on the following issues:

- Why did the club consider it not advisable to comply with the conditions on the license or the noise abatement order?

*I am not an officer of the club*

- Were you aware that you had breached your license?

*No*

- The sound limiter failed on just two occasions?

*No we don't think it was set properly in the first place*

- Can you think what might have changed in 2010?

*No we can't we have had this sort of music for seven years.*

- Why did you not accept the acoustic assessment?

*We wanted to speak to counsel and were told not to make any comments*

- Are you prepared to have the survey done?

*Yes*

- Are all doors and windows closed by 11.30pm?

*Yes*

- How many people attend the events?

*Average 60 – 70 people, many of whom would be there anyway, even if there was no live music*

- How many survey forms were circulated?

*Approximately 45 forms.*

- What hours did you apply for when you asked for the license?



*We have just heard 2am. We were told to apply for more than we needed even if we never used them*

- But you called Mr Adlem Gates a liar when he told people you had applied for up to 2am?

*Not a lie – it was a mistake*

Questions asked by Graham Steady, Public Protection Manager were:

- Do you accept that we must investigate if there is a complaint but will only take action if, in the opinion of the professional officers, the complaint is justified?

*No*

- Do you feel that the letter that you sent out with the questionnaire was going to encourage other people to complain?

*No*

Graham Steady asked Maggie Jones (Licensing Enforcement Officer) to clarify the original license application times applied for in 2010. Mrs Jones read aloud the original times from the application found as exhibit 6.

Questions asked by Mrs Gates (Interested party) were:

- How many people that you surveyed were relatives, and club members? How were the 3 houses on Seymour selected?

*The ones on Seymour were put out by Mr Scrine on his way to the shop. Of the others some may have been club members and one was a personal friend*

- All the responses were in your favour – no-one could hear the noise?

*We didn't put words into people's mouths*

- My understanding is that you have breached your conditions many times not just twice. You say that the noise limiter is not working properly, if you knew that why did you let it carry on for three years?

*We are trying to put matters right.*

Linda Holland, summed up on behalf of the responsible authority:

- The licensing authority has not confidence in the club management and would ask the committee to remove live music from the license.

Mrs Gates (Interested party) summed up:

- She said that she didn't believe that the club had taken on board the issues. She felt that they believed that they were having trouble from just one family.
- There should be no leeway for them to flaunt conditions further.

Graham Steady, Public Protection Manager summed up:

- Public Protection have tried to demonstrate that regular noise can cause a public nuisance. The club appear to be in denial of the impact of their activities and have bullied residents into not making complaints.
- It has been very difficult to work with the club.
- The provisions of the Live Music Act 2012 should be dissapplied to this premises.
- Both live and recorded amplified music should be removed from the premises licence.

The Sub-Committee then retired to consider the application at 1.50pm

The Hearing reconvened at 4.00pm

Following the deliberations of the Sub-Committee Members, the Solicitor for the Council made a statement of material legal advice given in closed session as follows:

- The Live Music Act
- What defines public nuisance

The Sub-Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council

**Resolved:**

The Western Area Licensing Sub Committee has resolved to amend the Premises Licence for the Trowbridge Cricket & Sports Club, Lower Court, Trowbridge as follows:

1. To remove recorded music from the licensable activities permitted by the licence.

2. To include a condition that no amplified live music can be played at the premises at any time. The provisions of s. 177A(4) of the Licensing Act 2003, as inserted by the Live Music Act 2012, are to apply to this condition.
3. To remove the additional conditions 2) i – iv, imposed at the hearing on 6 January 2011, as they are now inconsistent with the removal of amplified live and recorded music from the premises licence.

## **Evidence Presented**

### **Extent of the Noise Problem**

The Sub-Committee were addressed by Mr. Graham Steady, Public Protection Manager for the North and West Areas of Wiltshire Council, and also heard evidence from Mr. Richard Francis, Senior Environmental Health Officer and Linda Holland, Senior Licensing Officer, in support of the review application. These officers referred to the history of their dealings with the cricket club premises, including the service of an abatement notice in May 2010. The Sub-Committee were informed, both in witness statements and in oral evidence, of a number of incidents when officers of the Council had attended residential premises in Downhayes Road, following complaints about the level of music coming from events taking place at the cricket club. The Sub-Committee were also played a recording from noise monitoring equipment that had been placed in the bedroom of 23 Downhayes Road. Mr. Steady stated that, on a number of these occasions, the officers concerned had concluded that the level of noise constituted a public nuisance.

The sub-committee also heard evidence from Tracy Gates of 23 Downhayes Road, regarding the problems she and her family had suffered as a result of the noise from live music events that were held at the cricket club.

In response Mr. Colin Poplett, on behalf of the Cricket Club, explained the steps that the Club took to control the levels of music during events at the premises. He also presented to the Sub-Committee the responses to questionnaires that had been circulated to a number of properties in the vicinity of the cricket pavilion and drew attention to the fact that all of the respondents had indicated either that they could not hear any music from the premises, or that they were not caused any problems by it. The validity of this survey was challenged by Ms. Gates, on the basis that not all properties in the area had received a copy of the questionnaire and that its tone could have led to others who had been affected by the noise being reluctant to send in their views.

### Structure of the Premises

The Sub-Committee heard evidence regarding the structure of the cricket pavilion and the difficulties that this presented in trying to control the escape of amplified music. They were informed of the steps that had been taken since the granting of the premises licence in January 2011, including the installation of a noise limiter to be used during live music events. In addition, the Council had commissioned a report from independent consultants. Although those consultants had recommended a number of structural changes to address the escape of music, there was now some doubt as to whether those changes would resolve the problems, given the intrinsic nature of the structure, which was not suitable for amplified music.

### Management of the Premises

Mr. Steady and the other Council witnesses, both Environmental Health and Licensing, informed the committee that there had been a number of breaches of both the abatement notice and the premises licence conditions, particularly in relation to the use of the noise limiter. They referred to a number of occasions when the noise limiter had not been operating as required during live music events. As a result of their dealings with the Cricket Club on these issues, the Council's officers no longer had any confidence in the ability or commitment of the Club to address the problems or to promote the licensing objective of the prevention of public nuisance.

In response, Mr. Poplett and the other representatives from the Cricket Club explained that on one occasion the noise limiter had not been used, as there had been no-one present at the time who was able to operate it. On another occasion there had been an electrical fault preventing it from being used.

### Reasons for Decision

The Sub-Committee has carefully considered all of the evidence presented regarding the extent of the problems being caused by amplified music from events taking place at the cricket club premises. They were also referred to, and took account of, the relevant section of the S.182 Guidance (paragraph 2.19) and to the common law meaning of public nuisance, as well as the Council's licensing policy in relation to public nuisance. They were satisfied, on balance that the number and nature of the problems being caused did mean that it was appropriate to take steps to prevent public nuisance and in particular to respect residents' right to peaceful enjoyment of their property as stated in Wiltshire Council's Statement of Licensing Policy.

The Sub-committee accepted the evidence presented by Graham Steady, Public Protection Manager and Richard Francis, Senior Environmental Health Officer that the structure of the Cricket Club premises meant that noise is easily transmitted in the direction of Downhayes Road. They considered that the

premises, as they currently exist were unsuitable for amplified music events. They did not feel that there were any suitable conditions that could be placed on the premises licence that would satisfactorily address the problems.

The Sub-Committee also concluded that, given the history of the Club's dealings with both Environmental Health and Licensing Officers, they had no confidence that the current management structure of the club would comply with any further conditions relating to live and amplified music that the Sub Committee could impose.

The Sub-committee therefore concluded that, in order to promote the licensing objective of preventing public nuisance, it was appropriate to remove both amplified live music and recorded music from the licensable activities permitted under the premises licence. They also concluded that it would be appropriate to disapply the provisions of the Live Music Act 2012, so that the restrictions on live music would apply at all times.

The decision to remove recorded music from the permitted licensable activities does not prevent the playing of incidental music, in accordance with Part 2 of Schedule 1 to the Licensing Act 2003.

In reaching its decision the Sub Committee has considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 52); the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

### **Right to Appeal**

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of this decision. The amendments to the licence will not come into effect until the period for appeal has expired or, if an appeal is made, until that appeal has been disposed of.

(Duration of meeting: 10.30 am - 4.10 pm)

The Officer who has produced these minutes is Pam Denton, of Democratic Services, direct line 01225 718371 , e-mail [pam.denton@wiltshire.gov.uk](mailto:pam.denton@wiltshire.gov.uk)

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