

NORTHERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE NORTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 9 AUGUST 2011 AT COUNCIL CHAMBER, MONKTON PARK COUNCIL OFFICES, CHIPPENHAM IN RESPECT OF AN APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR THE PHOENEX BAR, HIGH STREET, WOOTTON BASSETT.

Present:

Cllr Trevor Carbin, Cllr Jon Hubbard and Cllr Bill Roberts

Also Present:

Kate Golledge (Public Protection Manager), Liam Paul (Democratic Services Officer) and Paul Taylor (Solicitor)

28. **Election of Chairman**

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

Resolved:

To elect Councillor Jon Hubbard as Chairman for this meeting only.

29. **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 – 8 of the Agenda refers).

30. **Chairman's Announcements**

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

31. **Declarations of Interest**

There were no interests declared.

32. Licensing Application

To determine an application for a Review of a Premises License in respect of the Phoenix Bar, 4 High Street, Wootton Bassett, Wiltshire, SN4 7BS by Ms P Evans and Ms L Sefton, local residents living in the vicinity of the premises.

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

These were:

- The key licensing objectives and possible steps as listed in the Wiltshire Council Licensing policy.
- That Mr and Mrs Kerr had taken ownership of the building in 2007 and had carried out major renovations as well as applying for, and obtaining a full Premises License to run alongside the existing Club Premises Certificate.
- Since 2008 the Licensing and Public Protection teams had been aware of complaints regarding noise from within the building and from its patrons upon leaving, as well as anti-social behaviour by patrons and complaints of littering.
- The main grounds for review raised by local residents were a) Noise Nuisance caused by entertainment held at the premises, and b) Antisocial behaviour by patrons of the premises.
- There were 7 relevant representations from residents living nearby during the consultation period and 1 from the local divisional member.
- The representations raised a variety of concerns including that of signage, and suggestions for improvement. Mr Kerr, the License Holder had also submitted a representation advising of the steps he planned to take to address the concerns of the residents.

Questions were received from the Sub Committee and the Licensing officer clarified that whilst the License holders had taken measures asked of them to try to address the problem, these solutions had only been temporarily success, with complaint usually re-surfacing after a period of time.

The Sub Committee then took the opportunity to receive the expert view of the Council's Senior Public Protection Officer, on the acoustics of the building and to receive a summary of his involvement with the building.

His main points were as follows:

- First complaints were received in November 2010 – with a letter sent to the premises informing the License holder of local concerns and offering to monitor the premises thereafter.
- Some further complaints were also received in 2011 so far, although there has been no opportunity to establish if the noise constitutes a statutory nuisance.

- The officer had visited the premises and suggested improvements such as adding a front porch with self-closing doors. It was confirmed this had been done.
- At that time there was no evidence of unreasonable activities but he expected that proposed Drum n' Bass nights would be likely to struggle to meet guidelines on what constitutes acceptable noise levels.

In accordance with the procedure detailed in the agenda, the review applicant, the Interested Parties and the License Holder were given the opportunity to address the Sub Committee.

Key points raised by Mr Evans on behalf of the applicants for a review were:

- Wiltshire Council was obliged by law to promote the four licensing objectives outlined in its Licensing Policy and in reaching a decision the Sub Committee should have regard to policies in effect.
- A duty to uphold the state of any conservation area is included in the Licensing guidelines – fly-posting and illegal advertising by the Licence Holder contravened this policy.
- Pointing to the representation by Councillor Peter Doyle he suggested that further actions to comply with existing guidelines and a restriction on loudspeaker volumes were necessary.
- A further concern that the residents shared was anti-social behaviour, including loud and swearing behaviour.
- Residents should be able to sleep between 23:00 and 07:00 without being prevented from doing so by loud noise and should generally be able to enjoy their property at any time.
- He mentioned that the previous Friday evening's noise levels were horrendous and that
- His worry was that the Licence holder was simply spending money to attempt to make a venue suitable for his vision, on a building which was fundamentally unsuitable for the sort of premises and entertainment planned.

The Chairman then invited questions from the License Holder to the review applicant's representative.

Mr Kerr, License Holder expressed that it was not his intention to upset or aggravate his neighbours – he wished at all times to have good relations with his neighbours.

Key points raised by the Interested Parties present – Mr B Foster on behalf of Miss V Munnely & Mr A Foster were:

- Certainty that the noise levels from the Phoenix bar were high enough to cause sleep disturbance.
- Questions relating to the Council's acceptable level of noise.
- A belief that suggested noise volume limits, as defined by the Institute of Acoustics, were being exceeded

The Licence Holder made a number of points in the following areas:

- *Incidents at the Premises* - He accepted that there have in the past been problems at his premises, but that he was in the process of smoothing these out.
- The Licence Holder accepted that on the Friday previous to the meeting, (as mentioned by the review applicants), the windows had been left open – causing a problem.
- He disputed the assertion that events continue until 3am or later, and maintained that the Bar remained open until 1am only, with around 20 people in the premises on average.
- *Behaviour and Culture of drinkers in Wootton Bassett* - Younger customers now come to the premises in addition to former customers. All staff are highly trained and refuse drinks to those who are too drunk. When ejected by staff these customers can become confrontational and also can make noise. A blacklist of barred people has been established.
- Patrons come down the street to the premises, but have no sensitivity to the noise they make in the high street. He has witnessed incidents of urination in the street and damage to flower borders.
- There was a culture in Wootton Bassett of not dispersing following a music event or closing time.
- *Outfit and staffing of premises* - The Licence holders had spent considerable funds to install air-conditioning and noise insulation so the premises are capable of withholding noise. The front porch had originally been removed in accordance with fire safety regulations and the new porch had been introduced at the Council officer's request.
- A member of staff will be stationed on the front door when there is live music. He hopes this will solve the problem. Customers are told upon exiting to be quiet and there were many signs to be quiet and reminding customers not to smoke
- *Advertising* – The Licence holder emphasised that as a relatively new entrant to a competitive market, advertisement was necessary to attract and retain custom. He apologised for past mistakes which had been addressed in talks with Wootton Bassett town council and stated that he now advertises through local magazines and other avenues.
- *Working together to find a solution* – The Licence holder emphasised that he wanted to work together with the community and offered to provide to officers a list of dates when live music would be playing. He would like to engage with residents and hold meetings. He stressed he maintained good working relationships with the School and Church who were the building's immediate neighbours and that he and his wife try as much as possible to keep the area around the bar as clean as possible.

The parties were then given the opportunity to ask questions of the Licence Holder. A debate ensued in which the Sub Committee discussed the following:

- The Licence Holder added that a member of staff patrols the smoking area to keep the back door shut, and confirmed that doorstaff stationed at the front of the building were normal staff and not SIA-accredited.
- It was confirmed all staff were permanent and had been in Mr Kerr's employ for 2/3 years
- The Chairman reminded the Licence holder that it was his responsibility to ensure that windows etc were not left open and causing unacceptable noise. The Licence Holder assured the Sub Committee that he would lock the windows in the future
- Questioned about actions to make the situation more sustainable the Licence Holder added that he did not believe the problem as severe as previously, and that he was amenable to a sound limiter being installed.
- The DPS was confirmed as Mrs Margaret Kerr, with Mrs Morris also holding a personal license.
- In response to a question from Mr Foster the Licence Holder commented that he did not see a need for SIA-accredited doorstaff, and that he hoped to handle containment himself.
- The Licence holder disputed the assertion that there were bottles thrown about every weekend.

The Sub Committee members sought clarification on some points before retiring to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Sub Committee then retired to consider the application at 12.05

The Hearing reconvened at 14.05

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:

There were no specific issues upon which the solicitor offered advice other than to remind the Sub Committee of the options available to them and the relevant criteria to be taken into account when considering their decision.

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:

That the premises license be amended by the addition of several conditions, as detailed below:

DECISION NOTICE

Northern Area Licensing Sub-Committee

Meeting held 09 August 2011, to consider an application for a review of the premises license in respect of the Phoenix Bar, 4 High Street, Wootton Bassett, Wiltshire, SN4 7BS

Decision

The sub-committee has resolved to vary the premises licence, by the addition of the following conditions:

1) That within 3 months, there be a minimum of 1 suitably qualified doorstaff (SIA-accredited) at the premises to monitor patrons leaving the premises and where necessary remind them of the need to disperse quietly. The above mentioned doorstaff to be employed on Fridays and Saturdays and additionally whenever there is regulated entertainment. The doorstaff to be present between 9pm until at least 15 minutes after the premises has closed.

Reason: For the prevention of public nuisance, prevention of crime and disorder and in the interests of public safety.

2) The premises may not open after 11pm for 3months, or until such time as additional condition 1 above, is fulfilled (if this is sooner than 3 months).

Reason: For the prevention of public nuisance, prevention of crime and disorder and in the interests of public safety.

3) A Noise Limiting device shall be fitted to the premises in an appropriate location to be installed within 3 months, and all live or recorded music shall be played through this device. The Noise limiter shall be connected to the main supply and prior to any live or recorded music being provided the limiter shall be set to a level agreed with the Environmental Protections Officers of Wiltshire Council. This level shall not be altered. Once agreed access to the limiter shall be restricted to senior members of staff only for resetting purposes.

Reason: For the prevention of public nuisance.

4) The applicant shall submit a noise management plan to the Licensing Authority within 3 months. The plan shall include a suitable monitoring regime when live music or recorded music is being provided; including exact locations, frequency and documentary evidence that monitoring is being undertaken. The plan shall be agreed by the Council's Environmental Protection Department of Wiltshire Council in writing before any regulated entertainment takes place at the premises. Any minor alterations to the noise management plan shall be submitted to and agreed in writing, by the Council.

Reason: For the prevention of public nuisance.

5) No live or recorded music to be permitted after 11pm, for the next 3 months, or until such time as a limiter is fitted and a noise management plan agreed with the licensing authority, if this is sooner.

Reason: For the prevention of public nuisance.

Informative:

The licensing sub-committee were mindful of the representation regard fly-posting and advertisements, but noted the license holder's promise to cease this activity and would like to remind the license holder that such activity may constitute an offense under planning legislation.

Reasons

The Sub-Committee noted that there were three main grounds on which this review had been sought. These were:-

1. Noise emitted from the premises during music events
2. Noise and anti-social behaviour caused by patrons of the premises, especially when leaving the premises late in the evening
3. Fly-posting and other unlawful advertising of events at the premises

In relation to problems caused by noise emanating from the premises during music events, the Sub-Committee took note of the comments of the local residents who had made representations that, during these music events, they found it difficult to sleep as the music was too loud, particularly when doors or windows of the premises were open. The Sub-Committee also took into account the comments of the Environmental Protection Officer that, given the structure and layout of the building, with the installation of a double-door system at the front of the premises, there was no reason why there should be a noise nuisance caused to local residents during most music events, provided these events were properly managed. The Sub-Committee therefore considered that the implementation of a suitable noise management plan would address this issue.

In relation to noise and anti-social behaviour caused by patrons of the premises, the Sub-Committee accepted that this was a problem and that steps taken by the Licence holder to address this problem had not been sufficient. They considered, however, that the use of suitable qualified door-staff would help to reduce this problem in the immediate vicinity of the premises as well as helping to ensure that the doors to the premises were kept shut during music events.

The Sub-Committee did not consider that any unlawful fly-posting was such as to require any additional licensing conditions to be imposed. If there were problems of this nature in the future, they would be better addressed through planning legislation

The sub-committee was therefore satisfied that the existing licence conditions, together with the additional conditions proposed, would satisfy the licensing objectives.

In reaching their decision the Sub-Committee took into account the relevant provisions of the Licensing Act 2003, in particular sections 4 and 52, the Government's statutory guidance issued under s.182 of the Act and the council's own Licensing Policy, in particular paragraphs 3.8 and 3.18, to which they had been referred during the hearing

Right to Appeal

All parties have the right to appeal to the Magistrates Court within 21 days of notification of this decision. The above additional conditions will not come into effect until the time for lodging an appeal has passed or, where an appeal is made, until that appeal has been finally disposed of.

(Duration of meeting: 10.35 am - 2.05 pm)

The Officer who has produced these minutes is Liam Paul, of Democratic Services, direct line 01225 718376, e-mail liam.paul@wiltshire.gov.uk

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