

At a meeting of the LICENSING SUB-COMMITTEE held in the CIVIC CENTRE on MONDAY, 10th MAY, 2010 at 10.00 a.m.

Present:-

Councillor P. Gibson the Chair

Councillors Maddison and Old

Declarations of Interest

There were no declarations of interest.

Apologies for Absence

All Members of the Sub-Committee being present, there were no apologies for absence.

Licensing Act 2003 –Determination of an Application for the Variation of a Premises Licence – The Grey Horse, Old Penshaw, Houghton-le-Spring

The Executive Director of City Services submitted a report (copy circulated) concerning the above.

(For copy report – see original minutes).

The Sub-Committee in accordance with the requirements of the Licensing Act 2003 and regulations made thereunder have read all the documents presented to them contained in and appended to the report for this hearing.

In reaching their decision the Committee have taken account only of the information presented by the Applicant and those relevant representations of responsible authorities and interested parties as defined in the Act.

In respect of the responsible authorities, the information provided was as follows:-

(a) The Police -

have not attended and have not written stating that they have any objections to the application.

(b) The Tyne and Wear Fire and Rescue Service:-

have not attended and have not written stating that they have any objections to the application.

- (c) The Health and Safety Executive -

have not attended and have not written stating that they have any objections to the application.

- (d) The Council's Development and Regeneration Department regarding planning issues -

have not attended and have not written stating that they have any objections to the application.

- (e) The Council's Community and Cultural Services Department regarding Pollution/Public Health/Health and Safety and Trading Standards issues -

have submitted their written comments/objections to the application.

Their position is set out in the Memorandum dated 13th April, 2010 from Marion Dixon, Environmental Health Manager which states:-

"Further to your recent memorandum regarding the above application, I would like to make the following comments.

Given the lack of previous complaint from local residents regarding the historical provision of amplified musical entertainment within the Applicant premises, Environmental Health would not ordinarily directly oppose the application to vary the Premises Licence at this stage. However, it would appear from the numerous objections raised by local residents that they have in fact been disturbed by excessive levels of noise on occasions where amplified music has been provided and thus share common concerns that this will only be exacerbated in the event that the application is granted. In view of these concerns, a preliminary inspection of the premises has been undertaken by Environmental Health. This has indicated that the building structure is potentially weak in terms of sound retention (single glazing and single access door to the front of the premises) and that music noise breakout is therefore possible.

This potential for disturbance indicates that interested parties may call a future review of the Premises Licence in the event that the application is granted without restriction and disturbance ensues. The following is therefore recommended as a preventative measure to preclude incidence of future disturbance and remove the possible future need to call a review.

As the building fabric clearly requires further investigation and assessment of its suitability in ensuring that amplified music can be provided without causing unreasonable disturbance to local residents, it is recommended that the Applicant appoint a suitably qualified and experienced noise control consultant to undertake a noise assessment.

The assessment should be undertaken to ensure that at the nearest façade of the nearest noise sensitive property, the noise generated from the applicant premises (the $L_{Aeq5min}$) should not exceed 10dB below the minimum external background noise during the operating period. The background noise level should be expressed in terms of the lowest $L_{A90.15min}$ *and*

where noise from the applicant premises will contain tones or will be intermittent sufficient to attract attention.

At the nearest façade of the nearest noise sensitive property, the noise generated within each octave band level ($L_{Aeq5min}$) should not exceed 5dB below the minimum external background noise level expressed in any of the individual octave band levels. The background noise level should be expressed as the lowest $L_{A90.15 min}$ for each of the octave bands during the operating period.

Following the assessment, a report should be submitted detailing the measures that are to be adopted to ensure that noise as a result of the public entertainment does not cause a nuisance to local residents or other noise sensitive premises.

Furthermore, it appears that residents also experience excessive levels of noise from patrons consuming alcohol outside of the premises. It is therefore recommended the Applicant agree to a condition prohibiting patrons from taking open containers outside of the premises.

Should you require any further information or wish to discuss this matter, please do not hesitate to contact me.

Environmental Health Manager"

Marion Dixon, the Environmental Health Manager, also attended the hearing and gave oral evidence stating that the Grey Horse was situated in a small village setting in a residential area with the nearest residential property only 20 metres away. Following receipt of the application and notice of the interested party objections, her officers had attended the premises to look at the structure regarding potential noise egress from the premises. They were aware that there have been a number of temporary events with entertainment taking place in the rear room of the premises where there is a double glazed bay window at the front the windows are simply single glazed. The history of the premises is that there have been a small number of complaints regarding noise. In 2007 there was a complaint regarding the noise from music being played there. In April of this year there was also a complaint regarding patron noise whilst outside of the premises. Her Officers had looked at the building and believe that it is acoustically weak. She has suggested that a noise assessment could be done which would identify these areas and where work needed to be done. Mrs. Dixon stated she had tried to talk with Punch Taverns about this and had been referred to the Area Manager, but to date he has not got back to her regarding this and therefore nothing has been agreed. Mrs. Dixon suggested that should the application be approved, conditions could be added to the effect that noise from music above a certain level is not allowed to emanate from the

premises. She also stated there was a problem with patrons taking drink out in open containers and standing outside drinking and creating a noise effecting residential properties in the vicinity.

- (f) The Council's Social Services Department by its Children's Services Section regarding the protection of children from harm -

have not attended and have not written stating that they have any objections to the application.

The Committee have also heard from twenty-three interested parties who have made written submissions to the Committee in respect of the application and whose full representations are set out in the Committee Report. In respect of those representations, a lot of issues referred to are not relevant to the current application which is a variation application to include the provision of live music (including Karaoke), no change of hours is requested. Most of the representations do mention noise from existing entertainment being sufficient to cause a public nuisance and making complaints about it and the unsuitability of the premises in location and structure to stop sound egress, this being made worse by doors and windows being kept open. They fear that by having live music and Karaoke, it will get much worse.

The majority of the other representations regarding litter from glass and bottles, drunken youths urinating in public and car parking problems are not relevant to this hearing which has to be on the likely effect of the grant of the application on the promotion of licensable activities and they are not.

The interested parties clearly have significant issues as to how these premises operate which could be dealt with in a review if one had been applied for. The majority of the issues complained about will be unaffected by the provision of live music.

A large number of interested parties attended the hearing but decided that there representations could best be put forward by Councillor Speding and by another resident, Mr. Chisholm.

Councillor Speding stated that he was the Ward Councillor for the area and was making representations regarding the public nuisance caused at the premises. He mentioned that it was the noise from both inside and outside of the premises and believed that granting the application to extend the provision of live music would greatly increase the noise and create a public nuisance. He stated that Environmental Health were right, the building as it stands is incapable of stopping the noise of such events getting out and disturbing residents. He suggested that double or even triple glazing might be required. The introduction of live music will increase the numbers attending the premises and naturally increase the potential for extra noise problems to be created.

Mr. Chisholm was asked to speak to give the collective representations of villagers. He believed that the four licensing objectives came into play and that the evidence that they have swamps any justification for granting the application. In respect of crime and disorder, he stated the residents wanted a village pub. The previous

owners Tetley had managed to operate the premises and keep everything contained in the pub. That however has recently changed with Punch Taverns owning the premises. There are now regularly fights and screaming and shouting outside of the premises. There are vehicles driving recklessly about and taxis blaring their horns. The village had entered the Village in Bloom competition getting flowers planted around the area. These flowers in pots were being vandalised. This is still going on at present. He stated they had involved the police and local authority but nothing was done. On one occasion where the police were called to a fight the police arrived allowed people to continue to argue sat in their car for about 20 minutes then left and the battle resumed. This was on 10th April and since then a similar thing has occurred again. If the extension is allowed, he predicts that the level of this type of behaviour will get worse.

In respect of public safety, drinkers spill outside onto the road whilst drunk. It is particularly bad on match days and bank holidays and some residents, rather than face the gauntlet of walking through these drinkers, remain trapped in their own homes. He has seen one small boy crying and trying to drag his drunken father away, whilst the father was trying to continue to fight with other drinkers. Mr. Chisholm stated there was further problems from drunken youths urinating openly in the area, beer glasses and bottles were thrown over into gardens where children could be playing. In addition one drunken man exposed himself to a child and the child's social worker. This type of behaviour needs stopping. The noise from existing music is already excessive and a problem when doors and windows are open. The premises seemed to conduct much of their business outside and have placed chairs and tables to attract more customers. The amplified music is a problem, in particular the pounding bass beat means that the number of residents living nearby are unable to hear their own TVs. Dr. Dinsdale, who lives 2 streets away also claims that he is affected by the noise. The later hours would exacerbate the problem.

In respect of protecting children from harm is demonstrated by what he believes amounts to child abuse. With children just abandoned by their drinking parents to play on the green, and are regularly seen running across the busy road. He concluded by saying that the strength of feeling is demonstrated by the numbers of residents who have written in objecting. He believed granting the application would benefit nobody other than Punch Taverns.

The Committee on behalf of the Applicant have heard from Mr. Ben Williams, a Barrister instructed by Punch Taverns. Mr. Williams stated that he could understand why the Council's legal advisor had addressed the hearing before any evidence was given regarding what relevant representations were and that this was a variation application and not a review and that relevant representations in this case were limited to the likely effect of the grant of the application on the promotion of the licensing objectives and since the application related only to the addition of live music and not any increase in hours as was mentioned by several interested parties, the only relevant objective relating to the application was the prevention of public nuisance. Since this is not a review there is no entitlement to take account of traffic, drinkers or children on the green or the gentleman who exposed himself. In respect of prevention of nuisance, there is a large amount of separate legislation dealing with this and the Licensing Act should not be used instead of these bits of legislation. If there were problems of public nuisance, abatement notices would have been served by

Environmental Health. If the evidence was as strong as had been claimed, it is remarkable that no review application has been issued. It should also be noted that a licensee can only be responsible for behaviour on his premises. Once they are beyond those premises, he cannot be held responsible for their behaviour. If there were all these problems, why have the residents never approached the licensees who would have assisted if any of the problems existed. The issue of who will benefit from the application is irrelevant. The pub is a commercial enterprise whose whole purpose is to make money. It is important to note that there have been no representations from the police and if the situation was as described he is certain there would have been. Even the representations from Environmental Health are not standalone representations but are based on the concerns raised by the residents following the application. None of the complaints that have been made are substantiated by evidence. If Mr. Chisholm claims that he could not hear his TV, why has he not spoken to Environmental Health and they would have been put equipment in place to verify these concerns. Environmental Health in their representations, are simply stating they believe there is potential for a problem but have no proof that there is actually a noise weakness in the building so why is it necessary for an expensive noise assessment to be carried out. The application is simply to add live music. The bay window in the room where the karaoke would take place is double glazed and none of the windows open. They have already been 17 temporary event notices used in the last three years which have allowed entertainment to go on till 2.00 a.m. None of these events, which were mainly karaoke, have received any complaints. He believed that there had been only be 2 or 3 live band events during this period.

Mr. Williams stated he had been to the premises this morning and had asked Mr. Hurst to put the music on and turn up the volume and said he stood outside and found it very difficult to hear any noise at all. He accepted that if the door was opened more noise was emitted. He stated, if the application is granted, Environmental Services can monitor the level and then would have evidence if it was too high. They cannot know before hand that noise levels will be a problem. If there are problems a review can be applied for. He stated that this was a good application, an appropriate application. There were no objections by the police, no issues of crime and disorder or public safety nor protection of children from harm. He did say he was prepared to make a concession and agree to a condition that no drink in open containers be allowed to be taken out of the premises after 10.00 p.m. They were not prepared to agree to a noise assessment because of the cost implications and the requirement for such an assessment was not established and therefore was disproportionate to seek such an assessment.

Councillor Maddison asked how frequently it was intended to have these Karaoke or live music events. Mr. Williams responded that as he had stated earlier they had already held 17 with no problems over the last 3 years. They would probably be looking to run them monthly but if they were a success, they might become more frequent, up to weekly which would likely to be a Saturday night. Councillor Maddison then asked how they would police the taking of drinks outside after 10.00 p.m. Mr. Williams suggested they would put a sign at the door and the staff could see through the window if anybody was still outside.

Councillor Gibson asked how many doors there were in the premises. He was told that there is the door to the front and fire doors to the rear which are not allowed to be

opened and that this is dealt with by Health and Safety Legislation. There was also an additional door to the rear smoking area. Councillor Gibson then asked how he could state that the windows were never open. Mr. Williams responded that they had been painted shut and there were very few windows anyway in the premises. Councillor Gibson then asked what Punch Taverns response was to the request to carry out noise assessments. Mr. Williams responded that they would not take this up. It was expensive and in his view unnecessary and the cost to the tenant would preclude any benefit from increased turnover. A condition that a noise assessment was required would be disproportionate as a number of events have already been held proving there is no evidence of a noise nuisance.

Following a short recess prior to parties summing up, Mrs. Dixon addressed the Committee advising she had spoken to the applicant and would put forward another proposal for member's consideration as an alternative to the noise assessment. She stated that her Officers will go out and work with the licensee and set a noise level which would keep the noise below a nuisance level at the nearest residential property and that the licensee had agreed once this limit is set to purchase a noise limiting device to ensure that for the karaoke these noise levels cannot be exceeded. The question was raised as to how to deal with live bands and Mr. Williams stated that he would be prepared to give 14 days notice to Environmental Health if a live band event was to take place to enable them to have officers present and monitor the noise levels and ensure that it is kept at an appropriate level.

Councillor Speding summed up by saying that much of the evidence on both sides was anecdotal and he himself had received complaints which he had passed on to the department also he was aware that the police have attended the premises several times and that if the members adjourned the matter, he could contact the police and obtain evidence to support this. He believed that a site visit would also assist and that he remained convinced that granting the license would result in a public nuisance being caused.

Mr. Chisholm summed up his position by stating that he still firmly believed by granting them the right to have live music they would be creating a problem.

Mr. Williams stated that Members needed to look at the legislation and guidance. He in particular referred them to paragraph 2.35 of the amended guidance which states that conditions on a licence should not be necessary where there is other legislative provisions to deal with such problems. The Environmental Protection Act 1990 and other statutes allow for abatement notices etc. to be served if a noise nuisance exists. He also reiterated that any conditions must be focused on measures within the direct control of the licensee and that most of the issues referred to were outside of this scope. He also referred to page 143 of the guidance in respect of noise and vibration and considered that any condition imposed would be unnecessary and disproportionate. He concluded by saying that the cost of a noise assessment was disproportionate considering the lack of evidence borne out by the fact that 17 temporary events had been held without problem. He concluded by saying that the application should be granted but he was prepared to give the concessions already indicated that they will work with Environmental Health officers in setting a noise level and purchase a noise limiter and will provide 14 days notice of any event involving a live band.

In accordance with the Council's procedures adopted for hearings before its Licensing Sub-Committee all parties – the Applicant, Responsible Authorities and interested parties – have been given an equal opportunity to present their respective positions and sum up thence having heard all the evidence.

The Committee, having heard and read all the evidence, have considered all of this in light of the requirement placed upon them in the Act, to promote the four licensing objectives of:

- (1) the prevention of crime and disorder;
- (2) public safety;
- (3) the prevention of public nuisance;
- (4) the protection of children from harm.

The Committee have also had due regard to the Council's own statement of licensing policy and the issued government guidance.

Specifically the Committee has taken into account the following provisions of the Licensing Act 2003:-

Section : 34, 35 and 36

Reasons: These Sections deal with the application to vary a Premises Licence and its determination.

The Committee has taken into account the following provisions of the guidance under section 182 of the Act:

Paragraphs 1.1 to 1.8, 1.11, 1.14 to 1.19, 2.4 to 2.5, 2.19, 2.32 to 2.36, 8.3 to 8.16, 8.41 to 8.46, 8.77 to 8.80, 9.1 to 9.12, 9.19 to 9.28, 10.7 to 10.16

Reasons: These paragraphs the licensing objectives and aims, variation applications and their determination and the attachment of conditions to the Premises Licence.

The Committee has taken into account the following provisions of its statement of licensing policy:

Paragraphs 4, 9, 10, 11, 13, 16, 17 and the pool of conditions in Appendix 1.

Reasons: These paragraphs and Appendix 1 deal with the issues being considered in this application.

The Committee have decided in respect of this application having regard to the licensing objectives:-

(i) Prevention of Crime and Disorder

The Police have not objected and there is no evidence that by allowing live music including Karaoke will impact on the Crime and Disorder objective.

(ii) Public Safety

The application raises no issues relating to Public Safety.

(iii) Prevention of nuisance

The interested parties believe because of the premises situation in a residential area, noise will be a problem. They claim it is a current problem but, prior to the application, had not involved Environmental Health but have done so now. Environmental Health have since inspected the premises and consider a problem is possible. The structure of the building could be weak, there is some single glazing and direct access via a single door, making music breakout possible. As a way forward it has been suggested that Environmental Health Offices will work with the licensee to identify appropriate noise levels and the licensee will then purchase a noise limiter and set the karaoke equipment at this level. It has also been suggested and agreed that where a live band is to play, Environmental Health will be given 14 days notice of this and can be involved in setting appropriate levels and or putting in monitoring equipment. The licensee has also agreed to a condition being added that no open containers be allowed to be taken outside of the premises after 10.00 p.m.

(iv) Protection of children from harm

There are no issues raised by the application.

1. RESOLVED that the Committee have decided to grant the application. They consider that there is insufficient evidence of a noise nuisance to do anything other than grant but have made the residents aware of the review process and that if the licensee breaches any of the conditions he will be liable to be prosecuted and be subject to a review application which has the ultimate sanction of removing the licence entirely.

The application is granted subject to the following conditions:-

(a) Prevention of Crime and Disorder

No additional conditions relating to this objective are being added as a consequence of this variation application.

(b) Public Safety

No additional conditions relating to this objective are being added as a consequence of this variation application.

(c) Prevention of nuisance

The Committee have decided to impose the 3 conditions discussed and consented to by the applicant. These are:-

1. No open containers to be taken from the premises after 10.00 p.m. and all outside consumption by those already outside to cease by 10.00 p.m. with all such persons being directed back inside the premises.
2. Environmental Health Officers to set an appropriate noise level for the karaoke equipment with this to be maintained by way of a noise limiter purchased by the licensees and set at this fixed level.
3. In the event of any other live music not using the equipment with the noise limiter attached. The licensee will give 14 days notice to Environmental Health who can monitor and assist in ensuring that appropriate noise levels are kept to during such events.

(d) Protection of children from harm

No additional conditions relating to this objective are being added as a consequence of this variation application.

(Signed) P. GIBSON,
Chairman.