

Decision of District Judge Elsey

"This is an Appeal against the determination of a review into the operation of the London Inn. The Appeal on behalf of the London Inn was presented by Mr. Young the Owner and Managing Director. Mr. Young had instructed Counsel who was not available to attend the Hearing, and the matter was previously put back two days to allow for his Counsel to attend at the commencement of this Hearing. The Hearing was then put back a further day to give Mr. Young additional time to prepare his presentation. The decision to proceed and not adjourn the matter was taken having considered the impact of an adjournment on the other parties and the other advocates involved. In the Hearing Mr. Young has presented his case with conspicuous ability and it is my view that he has not been disadvantaged by presenting his own case.

The law in this matter can be found in the Licensing Act 2003 in particular section 181 schedule 5. Section 181(2) deals with the powers of the Magistrates Court in respect of the appeal. The Hearing is a de novo re-hearing but can be informed by the Notice of Determination that was prepared by the Licensing Authority. In these reasons I will refer to the evidence, and have taken into account in respect of the law Section 4(1) of the Act requires the promotion of the four licensing objectives. In addition I have had to have regard to the licensing policy and the government guidance. I have considered paragraph 2.4 of the guidance regarding of the imposition of conditions and that they should be to regulate the behaviour on the premises but cannot manage the behaviour of customers once they have gone beyond the direct management control of the licence holder but can be put in place if they directly impact on the behaviour of customers in the immediate vicinity of the premises as they seek to enter or leave. I have also had to make a judgement under paragraph 2.32 as to what constitutes a public nuisance and the impact of the licensing activities on people working or living in the vicinity. In respect of the vicinity, I have taken it to mean what I understand is the commonly accepted meaning being that of neighbourhood and those living in the local community.

Mr. Young in his evidence advised that when he took the premises over it was the former Miners Welfare and at that time operated at a 10.30 p.m. closing hour. He confirmed that he had spent considerable effort and money transforming the current premises into the current bars and nightclub that exists there. He describes the effort and work he has put in with the Licensing Authority and Police in its attempt to cut down on the anti-social behaviour. At the same time he has also attempted to deny that the premises is the source of the anti-social behaviour but suggested other premises could be responsible for this. He states that the premises are not viable if not allowed to continue to operate until 2.00 a.m. but has produced no accounts of financial papers to support this contention. I have heard evidence from four residents and the manager of the local social housing company. They have described a catalogue of noise, criminal damage and anti-social behaviour into the early hours of the morning. No one could fail to get the impression of the distress they have suffered or that the source of the problem is without doubt The Groove Nightclub. It would be an insult to them if I accepted that they were unable to locate the source every weekend of the disturbance and the sleep deprivation they are forced to suffer. Indeed one witness Kate Gardner advised that the elderly resident of the sheltered accommodation she was asked to represent, who lives on the ground floor premises

are not able to go to bed every Friday and Saturday until after 3.00 a.m. Miriam Reid detailed the extreme disturbance to her sleep and the feeling of intimidation that she has suffered. She maintained a detailed video diary which identifies the level of the problem both from patrons and from taxis going to and from the club.

The Environmental Services Manager Marian Dixon has supplied detailed documentation and sound recordings from the bedroom of residents houses. The recordings show that the noise levels exceeded the World Health Organisations recommended level of 45 decibels. This is the level above which it is the view that sleep disturbance will be likely. She described her own observations of the patrons leaving the premises describing it as extremely scary like wild animals. Her views are corroborated by audio evidence which I have listened to which demonstrates high levels of disorder shouting, screaming, swearing, screeching, noise from squealing, taxis breaking etc., All this was clearly audible from inside of the residents houses and seems to have been with complete disregard to the requirements of the residents in the early hours of the morning. I have heard evidence from Mr. Lesley Reay in respect of an assault that he witnessed by door staff and then the incident the following night when his vehicle was surrounded by twelve door staff. It is my view that this clearly was solely done with the intention of intimidating him and the other officer. This was confirmed by the telephone call from Mr. Collins to Mrs. Dixon in which he disclosed that he had obtained the name and the address of Mr. Reay from the registration of the vehicle. There can be no other reason than intimidation for this statement.

Three police officers have also given evidence. P C. Butler described two dvd's the first showing closing of the premises on 25th February 2007. The dvd recordings were from a high visibility police vehicle and showed extensive large scale disorder occurring. The resulting large scale police attendance resulted in gridlock with clearly police sirens blaring lights flashing which it would have been impossible for residents to sleep through. The result of this incident produced gridlock in this residential area. The second dvd on the 29th September 2007 shows the assault on a customer by door staff. The police evidence continued with P.C. Watson who analysed and gave evidence in respect of the statistics which show that there is no indication of any reduction in the disorder associated with these premises. Superintendent Blyth gave evidence and produced along with her statement numerous incident logs relating to the premises. She advised in evidence that The Groove is responsible for a disproportionate level of crime and disorder in the area. Every weekend she has to deploy two double crewed police vehicles and a police van consisting of a sergeant and three pc's to simply keep a lid on the crime and disorder associated with the premises. She described the police's operation in 2007 in respect of class A drug use and advised that there are now fifteen convictions resulting from the police raid arising from the use or supply of class A drugs. She advised that she had lost confidence in the ability of the management to deal with the situation and had changed the police's stance to that of revocation following the incidents in December and January based on the intimidation and assault witnessed by the Environmental Health Officers.

Mr. Young had stated that he has operated the premises for over ten years and had no problems and the current problems are not all down to him. He has expressed his willingness to work with all authorities and has tried to comply with everything that he has been asked to do. The problem however is intractable in that The Groove

Nightclub operates in a residential area. All of the measures that have been introduced so far have had little impact and the position will not be changed by any additional measures. I have in my consideration examined the Notice of Determination prepared by the Licensing Authority and consider it to be a thorough well reasoned notice. The only issue that I will take with the notice is in respect of the condition imposed relating to the constant monitoring of the cctv. It is my belief that this needs to be changed slightly removing constant monitoring and replacing it with the wording regular monitoring. The problems of The Groove are in my view irretrievable and there is a case that the licence could be revoked. However, I am not making that decision, although I am satisfied that the appeal must be dismissed save to the extent that the above condition be amended. Therefore the premises will be subjected to the implementation of the decision of the Licensing Authority that it will now close at midnight and have the other conditions attached to the licence."