

Licensing Sub Committee

Monday 2 September 2024

PRESENT:

Councillor Hendy in the Chair.
Councillor Tofan Vice Chair.
Councillors Allen and Simpson (Fourth Member).

Also in attendance: Jonathan Ball (Enforcement Officer), Rosie Brookshaw (Democratic Advisor), Cathy Morley (Lawyer) and Marie Price (Senior Enforcement Officer).

The meeting started at 10.00 am and finished at 12.54 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

62. **Appointment of Chair and Vice-Chair**

The Committee agreed to appoint Councillor Hendy as Chair and Councillor Tofan as Vice-Chair for this meeting.

63. **Declarations of Interest**

There were no declarations of interest.

64. **Chair's Urgent Business**

There were no items of Chair's urgent business.

65. **Review of Premises Licence: Club Inferno**

The Committee having:

- a) Used its discretion to allow the representations on behalf of the premises licence holder which were received late;
- b) Considered the Review of Premises Licence Report submitted by Will Tomkins, on behalf of the applicant, Environmental Health Services (EHS) and the other written representations submitted to the Licensing Authority in advance of the meeting;
- c) Heard from Mr Tomkins, on behalf of the applicant, as follows:
 - i) There continued to be a negative impact on the public nuisance licensing objective despite numerous attempts to work with the licence holder and bringing this application for a review was a last resort. There were conditions already on the licence which were strong enough to control noise from Club Inferno and it had

shown that it could meet those conditions, but the licensing objective continued to be undermined;

ii) Mr Tomkins summarised his report, the complaints he had received from residents and what he had witnessed himself. This included reference to periods where the situation improved and then deteriorated again, the previous review application and minor amendments made to the licence conditions in response to the noise nuisance;

iii) Video footage was shown to the committee from 1 July 2024 at 03.29 hours and 04.59 hours;

iv) Mr Tomkins clarified that the noise limiter was a small box attached to the wall. It was the property of Club Inferno, not the Council. Music from the club went through it and it would cut off if it was too loud. The level was set in agreement between the premises owner and Environmental Health, and in conjunction with residents. To adjust the level, the front had to be unscrewed;

v) The noise limiter level had been set twice by Mr Tomkins and his colleague. At the agreed level, the music could still be heard by residents but was at an acceptable level and did not hinder sleep. However, on both occasions, after a time the noise returned to a level so as to be a public nuisance. As a result Environmental Health did not know what else could be done with the noise limiter. There was nothing to suggest that re-setting it would help. The Environmental Health team is small and this was having an impact on them;

vi) There had been a breach of licence and this had a negative impact on the public nuisance licensing objective. Under existing conditions, there should be total sound containment between 2300 hours and 0800 hours. Environmental Health encouraged businesses to entertain customers, but not at the disruption of others;

vii) There had been numerous attempts to work with the licence holders but the issues continued;

viii) The licence holder had shown that they could comply with the conditions;

ix) Local residents had not only complained but also recorded when the situation had improved.

d) Considered the written and oral representations of the 3 local residents including:

i) Resident 1 – moved into their property in November 2022. When Club Inferno opened, the noise was ‘out of hand’, and disrupted all of their life. They worked full time at weekends. The weekend noise was ‘another level’. They found it hard to sleep, and were living on a ‘shoestring’ and dreaded weekends. There was an issue of people outside the club, intoxicated on the street. Although not all were linked to Club Inferno, there was evidence of some drinking in the street or carpark, then going into the club. They wished to reach a solution where everyone worked together in harmony. They understood Club Inferno was a business, but these were their homes;

ii) Resident 2 – moved into their property in August 2022 with their husband. It was their permanent home and they were not looking to sell. They could not live at the weekends. They described the impact on their family life, including: their grandchildren being able to stay, visits to the grandchildren being impossible due to lack of sleep, their daughter had to stay in a hotel when she visited. At weekends, they had to take natural sleep remedies, wear silicon earplugs and take paracetamol when they woke up. They woke up feeling dizzy and unable to function. They felt they were living a ‘drugged life’. It had impacted significantly on their work life. The noise had gotten worse. They stressed that Club Inferno had shown it could comply and that they had emailed Environmental Health when things had improved;

iii) Resident 3 – wanted to find a solution and was not trying to make things difficult. Environmental Health had been in their home and heard the noise. They were unable to live a normal life and needed to be able to live a happy family life. There were conditions to the licence and those should be complied with. The impact on their relationship with their wife and wider family (including the grandchildren as above) was significant. They were concerned for their wife who was taking natural sleep remedies to deal with the situation. Everything had been tried (including the noise limiter) but the issue continued. They described the drinking and smoking outside the venue. All they wanted was to live and sleep in peace.

e) Considered the written representations on behalf of the premises’ licence holder and oral representations presented by their solicitor, Ms Hetty Summerhaze:

i) Club Inferno was in a commercial area in the city and there had been a club there for 40 years. Historically, the area was not residential and had a number of businesses which were not open when the club was open and therefore there were not noise complaints;

ii) Club Inferno had understood the local resident’s position was that they were not aware of the venue when they bought their properties, and they were taking separate action in relation to this. The residents clarifies that this was not the case;

iii) Club Inferno understood its responsibilities to the local area and the need to comply with its duties. However, there needed to be a balance between the rights of the club and residents;

iv) Club Inferno offered positives to the community including: approximately 15 jobs and three security guards; popular entertainment for the city. The public at large would be impacted if the venue was not allowed to be trade;

v) There were conditions in place and Club Inferno was complying ‘as best they can’. The Club had ‘tried’ to comply with the conditions and acknowledged that they were not working. The noise limiter was in place and was complied with.

vi) The venue did not understand why the noise limiter was not working and offered CCTV footage to show this;

vii) Steps had been taken by the club to mitigate the noise including: the removal of two speakers and a large base speaker, the exit to the club being moved near the Theatre Royal carpark, an extra door at the entrance to the club had been put in to add an extra level of sound proofing, drinks were not allowed to be taken outside of the venue (including by smokers), security was in place and managed the queue and communicated with customers regarding noise levels, opening hours had been limited to 0200 hours to 0600 hours and the venue ensured that people left by 0545 hours, visiting DJs and promoters were made aware of noise levels and the noise limited device, and they carried out frequent checks on noise levels;

viii) In addition to the existing conditions, Club Inferno offered: to reduce the noise limiter level 'slightly', to move a speaker from the front of the venue to the back, to take one or two videos a night from outside the club to send to Environmental Health;

ix) Club Inferno had spent a lot of time and money on the refurbishment and the venue's income was reduced due to the reduced hours;

x) Club Inferno wished to get on with and work with local residents. They wished to be able to run their business and for their neighbours not to think the noise was too much. They were willing to comply with conditions and would be happy for further conditions to be added;

xi) The residents did not want the licence to be revoked. This would not be proportionate.

f) Disregarded the following:

i) The previous commercial character of the area and that there had been a licensed club on the site for over 40 years;

ii) The cost of refurbishment.

g) Took the following into account:

i) The existing licence conditions, in particular the condition of total sound containment between the hours of 2300 and 0800. This was the overriding condition in relation to noise and was easy to monitor and control;

ii) The extensive involvement of Environmental Health and work that had already been undertaken with Club Inferno and that the noise limiter levels had already been set on two occasions;

iii) The previous review which had resulted in a minor amendment;

iv) The previous periods where Club Inferno had complied with the licensing conditions;

- v) The need to balance the rights of residents and Club Inferno, and the parties stated willingness to reach a solution and would work together to do so;
 - vi) The positive and negative impact of Club Inferno on the public nuisance licensing objective in the community;
 - vii) The impact on the health and lives of local residents and that the Human Rights Act was engaged;
 - viii) The impact on the business and the contribution that late-night venues made to Plymouth's economy;
 - ix) That Club Inferno was not responsible for all members of the public in the street and the Committee had focussed on what was in the control of Club Inferno inside and out;
 - x) The Licensing Act s.182 Guidance and Plymouth City Council's Licensing Policy in relation to public nuisance.
- h) Prevention of Public Nuisance Licensing Objective:
- i) The representations from residents and the report from Environmental Health which included:
 - 1. Noise from inside Club Inferno causing external public nuisance;
 - 2. Noise made by people outside the club;
 - ii) The Committee determined that the representations by the Environmental Health Officer and the local residents concerning noise nuisance, in the form of both noise from the club itself and noise from its patrons, was relevant under this licensing objective;
 - iii) The Committee determined, having considered the clear evidence, that the operation of Club Inferno undermined this licensing objective;
 - iv) The Committee took time to consider the representations of both the applicant, the premises licence holder and the local residents to reach a decision that ensured that the review to the licence promoted the licensing objectives whilst balancing the rights of all parties;
 - v) The public nuisance licensing objective was being undermined despite the current conditions on the licence for Club Inferno. The club had shown it could comply with the conditions of the licence and the Committee wished to give it one last chance to show it could operate without causing a public nuisance;
 - vi) The Committee did not consider reducing the level of the noise limiter would have any effect given that the noise nuisance continued despite it being set at a higher level. The Committee felt that more must be done by Club Inferno and that public nuisance should not result from the operation of its premises;

vii) The Committee wished to encourage Club Inferno's business but not at the expense of the wider community or the licensing objectives;

viii) The Committee seriously considered, given the recent history of the venue, whether the revocation of Club Inferno's licence was appropriate and proportionate to prevent public nuisance, however decided to offer a final opportunity to the venue to address the current public nuisance and actively promoted the public nuisance licensing objective;

ix) Reduced hours for a period of three months was considered appropriate and proportionate to give Club Inferno the opportunity to show it could comply fully with the conditions of the licence;

x) During the three month period it was open to residents to contact Environmental Health with any further complaints, and for Environmental Health to submit a further review if the breaches continued;

xi) The Committee stressed that, whilst it could not fetter the discretion of a future Committee, if this matter came back before the Committee on review due to ongoing breach of conditions of the undermining of the public nuisance licensing objective, the Committee would consider revocation of the licence;

xii) The existing and amended conditions were appropriate and proportionate to promote the prevention of public nuisance, and the Committee considered them practical, achievable and enforceable.

The Committee agreed to vary the licence of Club Inferno as follows:

(1) For the period of **3 months**, beginning from the date of this decision, the licence was varied as follows:

- Hours Premises are Open to the public: Monday to Sunday 10:00hrs – 03:00hrs
- Supply for Alcohol for Consumption ON: Monday to Sunday 10:00hrs – 02:30hrs
- Indoor Sporting Events: Monday to Sunday 10:00hrs – 02:30hrs
- Live Music (Indoors) Monday to Sunday 10:00hrs – 02:30hrs
- Recorded Music (Indoors) Monday to Sunday 10:00hrs – 02:30hrs
- Performance of Dance (Indoors) Monday to Sunday 10:00hrs – 02:30hrs
- Late Night Refreshment (Indoors) Monday to Sunday 10:00hrs – 02:30hrs
- Anything of a Similar Description to Monday to Sunday 10:00hrs – 02:30hrs

That falling within Live Music (Indoors), Recorded Music (Indoors) and Performance of Dance (Indoors).

PLEASE NOTE: These hours would revert back to the hours on the current licence on the expiry of the 3 months.

(2) Conditions:

The Conditions on the existing licence remained the same save for Conditions 1 and 5 under the Prevention of Public Nuisance, which shall read:

1. 'A noise limiting device shall be fitted so that all live and recorded music is channelled through the device(s). The maximum noise levels will be set by agreement with Plymouth City Council's Environmental Health Service and will be reviewed from time to time as appropriate. The noise limiting device must be fully functional and in proper working order at all times during performance of live and recorded music. All amplified music must go through the noise limiting device and any visiting artists must be made aware of this and the noise limits agreed with the EHS.'

5. 'The Premises Licence Holder or nominated person shall erect and maintain in a prominent position at every exit, on internal and external walls and in the smoking area, clear, conspicuous and legible notices requesting patrons to avoid causing noise, nuisance or disturbance to local residents.'

PLEASE NOTE: These conditions will remain in place following the expiry of the 3 months referred to above.

Whilst not a specific condition, the Committee recommended that Club Inferno:

- Moved the speakers to the rear of the venue as suggested at the hearing;
- Carried out and documents regular checks from outside the venue during the opening hours to ensure total sound containment as required by its licence;
- Checked the operation of its current noise limiting device;
- Reiterated to its security staff their roles in relation to conditions 4, 6 and 7.