

Licensing Sub Committee

Tuesday 4 April 2017

PRESENT:

Councillor Dr Mahony, in the Chair.
Councillor Rennie, Vice Chair.
Councillors Carson (Fourth Member) and Sam Davey.

Also in attendance: Sharon Day (Lawyer), Fred Prout (Senior Licensing Officer), Will Tomkins (Environmental Health Officer) and Helen Rickman (Democratic Support Officer)

The meeting started at 10.00 am and finished at 2.15 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.

1. Appointment of Chair and Vice-Chair

Agreed that Councillor Dr Mahony was appointed as Chair and Councillor Rennie was appointed as Vice Chair.

2. Declarations of Interest

There were no declarations of interest in accordance with the code of conduct.

3. Chair's Urgent Business

There were no items of Chair's Urgent Business.

4. Application for Review of Premises Licence for Plymstock Inn, 88 Church Road, Plymstock, Plymouth

The Committee:

1. considered the report from the Director for Public Health;
2. heard from Environmental Health, considered their written representations and heard live evidence from a local resident. A summary of the same is recorded below:
 - the premises are surrounded by residential properties and noise disturbance is arising from live music, karaoke and other entertainment;
 - there have been on and off complaints of noise from the premises since around 2008 and the complaints have depended upon the type of music and the management of the premises;

- Environmental Health has been working with the current management since October 2015 to try and address the noise nuisance, however noise levels continue to cause disturbance, particularly with regards to live music events at weekends. The outside area/beer garden also causes problems particularly after 1am;
- an abatement notice was served in September 2016 and there has been no considerable improvement since then;
- Mr James Wright became the PLH on the 9 October 2015 and Mr Peter Wright is the Designated Premises Supervisor;
- the premises are currently licensed to have live and recorded music:
Sun - Wed 8am - midnight
Thu - Sat 8am - 1am
- live music is unregulated between 8am - 11pm but due to the problems experienced at the premises this needs to be brought within the control of the Licensing Act 2003;
- there are conditions on the licence at B1-5 which require the management to take actions during entertainment however at present the existing conditions on the licence are only enforceable after midnight;
- Environmental Health says that these are not suitable to protect local residents from being disturbed by live and recorded music and patrons using the outside area. Environmental Health outlined the contact that they had made with the PLH (Premises Licence Holder) to try and find a way forward. There had been telephone calls to explain the problems, letters written and an agreed action plan drawn up in agreement with the PLH. The action plan had never been signed and returned by him. When officers visited and witnessed problems of noise they had whenever possible, met with the PLH to discuss what needed to be done to address the problems;
- during visits officers had noted that the PLH were using an App to try and record decibel levels and had advised the PLH on a few occasions that whilst decibel levels could be recorded, the effectiveness of this depended on the conditions that existed at the time and that subjective assessments were just as important;
- a local resident explained the noise problems she had encountered and the personal effect this had had on her and her family situation;
- in light of the problems reported Environmental Health recommended that the existing conditions were replaced and that regulated entertainment is restricted;

- if the committee was not minded to remove regulated entertainment from the licence then further conditions were suggested as a way of controlling regulated entertainment and that as a result section 177A of the act would not apply to the licence;
- Environmental Health's evidence was that:

Noise from the outside area/beer garden

- residents reported problems from patrons in beer garden/outside area shouting and swearing and rowdy behaviour. There were limited problems with this during the week but the main problems occurred from Thursday until Sunday. This consisted of foul, threatening, aggressive language, singing, shouting and arguments. The noise could be frightening and was generally worse after 9pm. It was particularly bad at closing time between 1am and 1.30am. There had been times when the noise could be heard over the television of the complainants;
- the foul language was clearly audible in a child's bedroom and this was unacceptable. The Child was asking questions about the language being used. There were also various ear muffs in their bedroom to prevent them from having to listen to the noise and language;
- the noise from the beer garden caused significant distress to residents and prevented them from relaxing and sleeping. Some residents had to have sleeping pills to cope with the noise;
- Environmental Health Officers had visited in response to complaints on many occasions and witnessed the problems reported by residents. Dates where problems had been witnessed were the 16.9.16, 24.9.16, 25.9.16 13.1.17, 28.1.17, 3.2.17, 10.3.17 and 11.3.17. During a visit on the 10.3.16 the officer had noted that whilst noise was a problem the staff had taken steps to address it by moving patrons inside;

Noise from music

- residents had reported that live music was a particular problem. Music, song lyrics and thumping bass could be heard in residents' properties even with the windows closed. Friday and Saturday evenings were particularly bad. Residents considered that noise escaped from the premises when the doors were opened;
- one resident reported that on Sunday - Thursday there were few problems but on a Friday and Saturday night it was like living near a nightclub and sometimes the music was loud enough to allow them to feel they were actually in the pub itself;
- one resident stated they accepted the noise level up to 10.30pm but after that it disturbed them with thumping bass.

- the loud music meant that televisions had to be turned up to hear programs and it was not possible to read a book. The music also disturbed sleep;
 - in summer, live music taking place outside made it unbearable to live in some properties;
 - the residents all accepted that some noise was to be expected when living near to a pub however this noise was beyond what was acceptable.
 - Officers had visited the complainants' premises and also witnessed the problems. In particular visits where problems were noted were recorded on the 24.9.16, 25.9.16, 3.2.17, 4.2.17, 28.1.17, 4.3.17 and 11.3.17.
 - evidence was presented to committee of further music noise from the premises on the 1.4.17. An Environmental Health Officer had witnessed intrusive music noise in the complainant's bedroom which was coming from the premises. The noise started at around 10.45pm and was continuing when the officer left the area at 11.15pm. The music noise was loud enough to disturb sleep. As he passed the pub the officer noted that the windows were vibrating from the music noise;
 - the above is a summary of the evidence provided. The full evidence is detailed in witness statements from both officers and residents presented by Environmental Health as part of their representation. These statements were taken into account by committee when reaching their decision. With regard to the evidence in relation to the incident on the 1.4.17 the committee accepted the evidence which had been read out as this had been provided directly from the officer's written record of the visit;
 - the committee considered that the evidence provided was relevant under the licensing objectives of Prevention of Public Nuisance and Protection of Children from Harm
3. heard from the local resident whose representation appears at appendix 2 in the report. Their verbal and written representations were considered and are summarised below:
- raised concerns that the review had not been properly advertised. In response to this the licensing officer informed committee of the advertising steps that had been taken to comply with the requirements;
 - whilst they supported live music and didn't mind hearing the music during the day, the noise went on late into the night and was at levels that were unacceptable. The bass level was extreme and could be felt resonating in their chest when they lie on their bed. Open air music events in warmer months are like having a festival on their doorstep. The noise levels interfere with sleep and their quality of life;

- problems also arose from noise from patrons which consisted of fraught conversations, singing, shouting and tears. This noise goes on for an hour or more after the pub closes and is loud and aggressive. This is at its worst from Thursday through to Sunday and during the summer months. The effect is that sleep is disrupted;
- they are regularly woken by patrons leaving the premises who congregate in groups locally before heading home;
- the management fail to control rowdy clients;
- it was accepted that some noise is likely when you live near a pub but currently this is pervasive;
- children were also left unsupervised in the garden whilst adults drink throughout the day;
- it was further suggested that there were problems with underage drinkers at premises;
- a Facebook post was produced in the representation which suggested that on the 01.02.17 the pub was reportedly over crowded with little visible management;
- that the conditions which were suggested by Environmental Health seemed to be a positive approach and, if they were properly implemented, should be a big improvement;

The committee considered the representations raised above were relevant under the licensing objectives of prevention of public nuisance, public safety and protection of children from harm and were taken into account when reaching their decision.

4. considered the written representation at appendix 3 of the report which detailed that:
 - the noise is no louder than it has ever been either through music or from the patrons. They considered that the problem was that the population has become older and that is what causes the noise to be a problem. This point was noted as being relevant under the prevention of public nuisance licensing objective and was taken into account by the committee when reaching its decision;
 - the pub provides great entertainment and supports local artists. They considered that it would be a shame to lose the fantastic acts put on by this well run pub. This point was not considered by committee when reaching its decision as it was not relevant to any of the licensing objectives;
5. considered that the representation at appendix 4 of the report from the freeholder was not relevant to any of the licensing objectives and therefore the committee did not take this into account when reaching its decision;

6. heard from the legal representative for the PLH and witnesses called on their behalf as follows:
- the Police have not made any representation and had only been called to the premises twice and neither occasion had anything to do with trouble occurring at the premises;
 - the police had been at the premises on 1.4.17 at 11.15pm and had reportedly commented that they thought the premises were closed as there was no noise. The PLH suggested that a check with the Police would reveal which officers it was and what they had said;
 - a public house has been located at this address since 1876, providing refreshment and entertainment for many years. The premises have been in the location long before most of the neighbouring residential properties;
 - it is a listed building which causes problems with glazing and soundproofing;
 - the business employs 27 staff and contracts live musicians and casual staff for special occasions. It is a community hub serving the people of Plymstock with emphasis on family traditions and support for the community with fund raising and events for community groups and charities. It is very popular and the overwhelming proportion of business is local. If live music stops then people will lose jobs as the business will have to scale down. The community don't want to see pub close;
 - in accordance with customer demand, live music is primarily provided on Friday and Saturday evenings. An online petition presented as part of the representation which shows the overwhelming support the premises has;
 - the Premises were taken over by the Wright family in 2011, initially by Peter Wright who is the current Designated Premises Supervisor. He has been a licensee for 25 years and runs the Three Crowns as well. His son James took over in 2015. He has worked in the licensed trade for about 8 years and holds a personal licence;
 - when Peter Wright was in charge there were no problems because he was trying to build on the community aspect. He has been ill since 2015 and has had to get James Wright to assist in the management of the premises;
 - James Wright as PLH did his best and initially things were reasonable. This is shown by the lack of complaints. However things deteriorated at the end of last year and beginning of this year. Due to his father being seriously ill the burden of the family business fell on the PLH. In addition to this he and his partner suffered a personal trauma and he admits that he took eye off ball with regards to the business. The PLH does not want problems with neighbours;

- due to his father's illness they are proposing to appoint Mr Twomey as the Designated Premises Supervisor. This gentleman holds a personal licence and has worked in the licensed trade for 10 years. He will take on responsibility of day to day management of pub. He is an approachable man and is known in the locality and is best equipped to take on that role;
- they are also proposing to appoint Mr Baker, who has worked at the pub for last 9 months, to be in charge of regulated entertainment. It will be his role to liaise with performers, karaoke, control sound levels and generally be responsible for monitoring noise from music;
- the aim of the above two measures is to ensure that people have specific roles in the business so that less of the burden falls on the PLH;
- current complaints seem limited to only one or two residential properties. The majority of the neighbourhood support the pub and have no complaints;
- in relation to the music noise, the PLH considered that a noise limiter would resolve the problems and Mr Baker will be responsible for ensuring it is working. They had not been able to address the issue of the noise limiter earlier as Environmental Health had not provided any guidelines on what decibel levels would be suitable. It was explained that staff did currently carry out decibel recordings to assess noise;
- in relation to the noise from the Beer Garden it was accepted that it could be a problem in the evenings as it is understandably popular and people tend to forget where they are and that noise travels. Mr Wright will employ two doorman on Friday and Saturday nights and one would be dedicated to the outside area for the evening. There were already notices on tables asking patrons to respect neighbours and the garden benefited from CCTV. The door supervisors would also be responsible for supervising patrons leaving the pub and dispersing;
- the PLH stated that they mostly accepted the conditions put forward by Environmental Health as a way of dealing with the problems however there were a couple of points with which they disagreed:
 - they would be happy with regulated entertainment being limited to twice per week but the proposal of once a week was not workable for them;
 - the suggestion that music performance was limited to two hours was also not accepted. Two hours is the average amount of time a performance takes and therefore to take into account setting up and breaks three hours was more workable.

- Witness one told the committee:

he lives 100 yards away from the premises and has no problems with loud music. The pub does a lot of charity work and is a community hub during the day. If the music was removed from the licence food prices would have to go up. PLH had spent a lot of money on soundproofing on the windows to try and address noise problems. He considered that the noise limiter would go a long way to dealing with any problems experienced by some residents. He did not agree that the beer garden caused a problem and disputed that the children using it were not supervised. He pointed out that there were signs on the tables advising that children should be supervised;

- Witness two told the committee:

she lives 50 yards away from the pub and has only experienced one problem with music noise from the pub in October last year. She had raised this with the PLH and it had been resolved. If she had ongoing problems with noise from the premises she would have moved house. She uses the pub and takes her children and grandchildren there and is friendly with the PLH. She said that neighbours she had spoken to had said that they didn't have any problems with noise from the pub and some of them lived closer than she did. She stated that she had heard music in the summer but this had not bothered her as a bit of noise now and again is ok if it's for a charity event. She disputed that children were not supervised in the garden and had never had cause to use earmuffs on her grandchildren or children because of the noise from the beer garden. She stated that if the music was taken away from the premises it wouldn't benefit anyone;

in reaching its decision, the committee took account of what was said by the PLH and witnesses. It further noted the difficult family circumstances which existed. However the committee did not:

1. did not accept the hearsay evidence which had been provided about what the police said in relation to the incident on the 1.4.17 as there was nothing to substantiate that this had been the view of the Police Officers. It was noted by the committee that the alleged comments by the Police were at complete odds with the evidence of the named Environmental Health Officer;
2. did not take account of the hearsay evidence from the witnesses of what other neighbours had told them about the music noise as there was nothing to substantiate these views from the people concerned;
7. allowed a short adjournment for the PLH and Environmental Health to discuss the proposed conditions with a view to coming to an agreement and way forward. Conditions were subsequently agreed between the two parties and presented to the committee.

8. considered the issues raised in the review and representations as follows:

- lack of supervision of children using the premises by parents. This had been disputed by the witnesses for the PLH. The committee noted that the premises had signs up requiring parents to supervise their children and did not consider that further action by the committee was required on this point.
- the suggestion of underage drinking. The committee noted that no representations had been raised by the Police on this point and therefore did not consider that any action was required on this point;
- the suggestion of overcrowding - The committee did not consider that they had sufficient information in relation to the incident and this had not been raised as an issue by Environmental Health or any other responsible authority and therefore no action would be taken on this point;
- noise from music and from patrons using the outside area/beer garden. The committee were satisfied on the evidence it heard that these issues were causing substantial problems to local residents. However the committee considered that the conditions agreed between the PLH and Environmental Health would address the problems which had been highlighted;

9. therefore it was agreed that:

- the following conditions would be applied to the licence:

Use of the Outside Seating Area

1. after 21:00 hours no drinks are to be taken outside to the outside area and no consumption of drinks to occur after 21:30 hours. The area to be closed to patrons at 22:00

2. a sign is to be placed in the outside rear area specifying that no drinks are to be taken into this area after 21:00 hours

3. after 21:30 hours noise levels in outside areas are to be monitored and controlled to minimise any potential impact on local residents

- the following conditions are applied in accordance with Section 177A(4) of the Licensing Act 2003;

Noise nuisance

1. the performance of regulated entertainment will cease by 23:00 hours.

2. no regulated entertainment will take place until a noise limiting device (the specification and design to be agreed with Environmental Health Service) is fitted so that all regulated, live, Karaoke and recorded music (including the Juke Box) is channelled through the device(s). The

maximum noise levels will be set by agreement with the 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 performances of live and recorded music.

If the noise limiting device breaks down the Council's Environmental Health Service must be informed as soon as reasonably practicable and in any event within 24 hours of the device breaking down. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay. No performances of live and recorded music shall proceed if the noise limiting device is not in proper working order.

3. all doors and windows shall be kept shut during regulated entertainment.

4. all doors and windows shall be maintained in good order and where appropriate acoustically sealed to minimize noise breakout.

5. noise emanating from the premises must not be heard above background levels 1 metre from the facade of the nearest residential property.

6. the performance of regulated entertainment will be limited to a maximum duration of three hours inclusive of any breaks.

7. the performance of regulated entertainment will be limited to two sessions per week.

8. the PLH shall nominate a senior member of staff as the person responsible for the management, supervision, compliance with licensing conditions and general control of regulated entertainment. This person will also be responsible for instructing performers on the restrictions and controls to be applied.

9. the PLH or nominated person shall carry out observations in the residential streets surrounding the public house on at least 30 minute intervals whilst live music, karaoke or DJ's playing recorded music is taking place to establish whether there is a noise breakout from the premises. These checks must be documented.

10. the PLH or nominated person shall ensure that suitable signage is positioned at exits to request the co-operation of patrons, in particular to make as little noise as possible when leaving the premises. Patrons will be asked not to stand around talking in the street outside the premises or any car park; and asked to leave the vicinity quickly and quietly.

11. the PLH or nominated person shall be available at all times during regulated entertainment and who is responsible for cooperating and liaising with any relevant responsible authority. A contact telephone number will be made available to local residents to contact the nominated person.

- the following conditions would be removed from the current licence as they have been replaced by the above

Conditions B1 - B5 of Annex 2B (Conditions agreed with the Environmental Health Authority)

5. **Exempt Business**

There were no items of exempt business.