

Licensing Sub Committee

Monday 4 November 2024

PRESENT:

Councillor Hendy, in the Chair.
Councillor Allen, Vice Chair.
Councillors Simpson and Tofan.

Also in attendance: Jonathan Ball (Enforcement Officer), Rosie Brookshaw (Democratic Advisor), Cathy Morley (Lawyer), Marie Price (Senior Enforcement Officer) and, Will Tomkins (Environmental Health/Trading Standards Officer).

The meeting started at 10.02 am and finished at 12.52 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.

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

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

67. **Declarations of Interest**

There were no declarations of interest.

68. **Chair's Urgent Business**

There were no items of Chair's urgent business.

69. **Exempt Business**

The Committee agreed to pass a resolution under Section 100A(4) of the Local Government Act, 1972 to exclude the press and the public from the meeting for the following items of business, on the grounds that they involved the likely disclosure of exempt information, as defined in paragraph 1,2 and 3 of Part I of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

After a brief discussion, the Committee agreed to return to Part I for the remainder of the meeting.

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

The Committee having:

- a) Considered the Review of Premises Licence Report, written submissions by Will Tomkins (Environmental Health/Trading Standards Officer), on behalf of Environmental Health Services (EHS) and the other written representations submitted to the Licensing Authority in advance of the meeting;
- b) Head from Mr Tomkins, on behalf of the applicant, as follows:
 - i) That the operation of the premises was continuing to have a negative impact on the Prevention of Public Nuisance Licensing Objective. The application for a review was a last resort for the Licensing Authority;
 - ii) A nightclub had operated at 24 Lockyer Street since before 2003, when the Licensing Act 2003 came into force. A review hearing took place in front of the Licensing Sub Committee on 2 September 2024. The License holder, Mr Navabi and his brother, the manager of Club Inferno, attended that hearing. At that hearing, Mr Tomkins explained in detail the action that would be required to promote the Public Nuisance Licensing Objective and that the club must comply with the conditions of its licence, including the following condition: “Between the hours of 2300 and 0800, there must be total sound containment within the premises”;
 - iii) At the hearing held on 2 September 2024, the Licence holder, through his legal representative, gave assurances that he understood the licence conditions and they would comply with them. There had been breaches at that point for well over six months before the hearing, and it was brought to the Licence holder’s attention to focus their attention on this condition. The condition was not new, and it did not change. The condition was not the number of speakers, but whether you can hear the music when stood outside the venue;
 - iv) Mr Tomkins clarified the meaning of ‘total noise containment’ and explained that if a person was not attending the venue, they should not have to listen to it. They were entitled to a quiet life without hearing noises from the premises. The Environmental Health Department was in favour of the night-time economy but people who were not attending the premises should not have to listen to the noise/music from it;
 - v) On 9 September 2024, Mr Tomkins received complaints regarding noise from the Club and recordings of sound from the club between 4.22am and 4.38am on 7 September 2024 and between 4.05am and 5.42am on 8 September 2024 were played to the Committee;
 - vi) The condition relating to total sound containment had been breached;
 - vii) Mr Tomkins noted that noise from Club Inferno was audible in the recorded provided by the Licence holder;
 - viii) Being brought to a review was a last resort and generally, when there had been a review, it did not come back to Committee. This was because a review hearing was the opportunity for the residents, the Licensing Authority and the Licence holder to work together and for the venue to make improvements. It was rare to have two reviews so close. Plymouth City Council wanted a vibrant night-time economy and for people to be able to go out and have a good time but expected venues to

operative in such a way that it entertained customers, and not the local residents or those outside the club;

ix) That, given the recent and historic breaches of the licence conditions and ongoing negative impact on the Prevention of Public Nuisance Licensing Objective, the only options were either the removal of regulated entertainment from the licence or the revocation of the licence;

c) Heard the written and oral representations from the three local residents as follows:

i) Resident One: The issue had been ongoing for 18 months. Residents initially had to rely on the Club using a noise limiter, but the club repeatedly did not use it. The noise was worse when there were visiting DJs. Customers came out of the club fighting and screaming, and the club had no control. Resident was aware of the sounds and the 'ebb and flow' of the city, but this was not the same as loud bass music throughout the night. They were permanent residents and had to live there. They wanted to reach an agreement and initially worked around the noise limited, but these were repeatedly not used so it moved to total sound containment. This was not happening. The noise was having a detrimental and 'extraordinary' impact on the resident, their husband and their whole family, including their children and grandchildren. The lack of sleep made it difficult to function and the resident was upset and anxious. There was no good will towards the residents and the club had no intention of complying with the licence. The resident had tried to co-exist with the club and be honest and fair in their representations. The resident did not want to have to make representations, to attend review hearings or to have Environmental Health Officers in their home. Another resident, who made a representation at the last hearing, but who was not in attendance at this hearing, was too scared to attend;

ii) Resident Two: Bought their property with their wife in June 2022 and were made aware that the premises was a nightclub in the past and had a licence. They were misled that the building was going to be turned into a House of Multiple Occupancy (HMO). They would not have bought their property if they knew it was near a nightclub. The business launched after the development of the apartments. The weekend before the last hearing, the resident investigated the noise at the club themselves. The noise was clearly audible 100 metres from the premises, in Princess Street and Lockyer Street. Club Inferno had no control over its customers and did not control customers in the street or sitting in Lockyer Street drinking and chatting. It had no control over the vehicles and the loud bass coming from them. There was no total sound containment and on a Saturday night, the music from inside Club Inferno could be heard outside. The resident had a recording taken at 0130am on 6 October 2024 when he was walking along the street and there was not complete sound containment. This was not provided prior to the hearing. The goodwill from local residents had gone. The behaviour of management to date did not suggest that they would comply with the licensing objectives. The resident did not believe the management was fit to operate the premises, nor could comply with conditions;

iii) Resident Three: Their whole family, including those who didn't live with them, were affected by the noise. The resident found it hard to see the state his wife was in. She was tired and depressed. It was impacted on the residents work and they had no peace and no happiness. The resident referred to the recordings played to the

Committee. In particular, the incident where they approached the club. The security team were not briefed and said they were contracted by the club and did not know about the previous licensing review. When the resident spoke to the manager, who had been at the last review, they said they had not received the decision. There was no need to wait for the decision as the club had said at the last hearing they were willing to comply and for more conditions to be added. The resident confirmed that they could still hear noise from the club in their bedroom and they heard it every weekend. The resident was concerned at the attitude and behaviour of the management. They had no belief that they would comply with the licence. The resident did not want to be there again and attended to object to the licence.

- d) Heard the written and oral representations made on behalf of Devon and Cornwall Police by Sergeant David Curtis:
- i) Incident on 8 September 2024. The Police had received a call from the ambulance service at approximately 0545am to attend an incident outside the premises. It was a medical incident involving a female who had exited the club. There were 18 minutes of body-worn footage of the incident which was broken down into four clips for the Committee to view. The clips were viewed by the Committee under Part 2 but were summarised at the hearing. The summary included: The Police Officers being asked by premises staff to move their vehicles and people away from the venue due to noise complaints, door staff using a member of the public's phone, a request for more officers to attend the scene and a member of door staff not knowing who the manager was. The club had a duty of care to that person who had left the club;
 - ii) Meeting of 27 September 2024. As a result of how Club Inferno handled the incident on 8 September 2024, a visit was arranged to the premises on 27 September 2024. At the meeting, three people attended on behalf of the Licence holder. The Police found six conditions of the Licence were not being complied with and this could be found on page five of the police report. Complying with the conditions cost nothing and was essential for the premises to be safe. A well-trained and briefed staff was essential to promote the Licensing Objectives. No incident book or record of the 8 September 2024 was available at this point;
 - iii) There were two other Police logs for the premises since it reopened in 2023. The Police would expect some police incidents and the overall three incidents relating to Club Inferno was low. There had been nothing flagged to the Police since the incident on 8 September 2024;
 - iv) The Designated Premises Supervisor (DPS). The DPS was not present on 7 September 2024, at the meeting on 27 September 2024, nor on 6 October 2024 during a Police patrol. There was no legal requirement for the DPS to always be present on site, but as a baseline, the DPS should be immediately identifiable to the authorities and was expected to undertake supervisory responsibilities for the day to day running of the premises. The role of the DPS was to ensure that the objectives of the business were successful whilst complying with the Licensing Objectives. They should be safely and consistently applying their skills with competence. It was the DPS's responsibility to make sure staff were aware of what the premises could do under their licence. The Police would expect anyone working on the premises to have had an induction, including fire safety, what was expected of the security team

and who the DPS was. The current DPS is the fourth since Club Inferno reopened in April 2023;

v) Plymouth had a Purple Flag for the night-time economy. When premises did not comply with Licensing, this was endangered;

vi) The Police believed that the Licence holder and the DPS were either unable, or unwilling, to have due regard to the legislation. There had been significant failings on their part. They should have been aware of their responsibilities and complying with the conditions of their Licence. They had been given extensive advice which had either been ignored or management had been unable to follow. Club Inferno had been through a review and conditions had been agreed but had not complied with them. The Police would expect a change in behaviour following a review and in failing to do so showed a disregard for the Licencing Act 2003 and the Responsible Authorities;

vii) The Police were seeking the revocation of the Licence;

e) Heard the written representations on behalf of the premises Licence holder and oral representations:

i) The Licence holder's representative apologised to the residents. Since they took the case over, Club Inferno had been trying to improve on keeping the noise to a minimum. Since 8 September 2024, they had done what they could to co-operate with residents;

ii) Recordings of 6 and 7 September 2024. The management did not know about the decision until Monday 9 September 2024 when it was sent to them by their solicitor. They paid a solicitor and left it up to them;

iii) Incident on 8 September 2024. A person from outside Club Inferno called an ambulance. The manager did not go out to help. It was the Security Manager's first night, and Club Inferno was unsure why he said he was not aware who the DPS was, not why they did not go to one of the three managers who were on duty on that occasion. They had a video of a member of staff assisting medical staff. This was not provided before the hearing. They believed that a member of the public had called the ambulance first. A member of security took their phone to give the emergency services a more professional explanation. A member of staff also called the ambulance but hung up when he knew someone else had called so as to not block the emergency services line. The security contractor did the paperwork, but the premises had their own incident report form. They had a meeting about the incident and had a few statements from staff, security and others. It was accepted that asking the Police to move their vehicle was 'ridiculous'. Club Inferno did not accept that they were unhelpful but believed the situation was being handled by professionals, namely ambulance staff and Police. They asked if the Police needed anything from the club, such as security camera footage. They asked if they needed water for the patient or anything else for the people around them.

iv) The DPS was always there and always on the premises. All of the security staff were told about first aid, who was in charge and who to speak to if there was an

incident;

v) There had not been any complaints after receiving the decision from the previous review;

vi) The club had done what it could to reduce the noise including: moving the speakers and testing the sound (some speakers were moved before the last hearing and another set after 8 September 2024), doing what they could to reduce guests outside including putting up signage to make sure customers did not affect local residents, ensuring the streets around the club were clean upon closing, ensuring staff fully understood the rules, providing sound proofing (there had been no noise complaints from the resident above Club Inferno as a result), changing the entrance so that customers went out the back and, undertaking checks on the door for customers who may have drunk too much;

vii) The club had videos from outside the club showing no noise;

viii) The resident's properties were single glazed, converted office buildings. The decision to develop them was undertaken when the club was closed. Club Inferno was unclear if the building work was brought to the correct standard;

ix) This was a small venue and other clubs in Plymouth were all backed by large companies. One of the managers of Club Inferno used to live in front of another venue and tried to complain because of the noise but no action was taken. It was not fair that other premises backed by big businesses could get away with it. Their business was being killed off and this would put off other small businesses;

x) English was not their first language and things could have been taken the wrong way, including the meaning of 'total noise containment';

xi) Everyone deserved a second chance. If the Licence was revoked, they would have no income and they had people to pay. Since the conditions from the previous review had been in place, they had not made any money. The business was personal, for them and the staff members they employ. They tried to have a positive impact, using local artists, builders etc. They wanted to make this work and they did care. They did not want to have to tell staff they no longer had jobs;

xii) The club had spent a lot of money on soundproofing to try and mitigate the impact on locals. Compared to other venues, they were very quiet. Sound was hard to contain but the club had worked hard to do this;

xiii) The residents had not communicated with the club rather than going to Mr Tomkins. They resident who attended the last hearing was given their number but never called or left messages;

f) Been informed by the Licensing Officers that the decision from 2 September 2024 was sent via email directly to the Licence holder, Motjaba Nabavi, as well as their solicitor, Lalah Adibzadeh of Kanaga Solicitors, on 5 September 2024;

- g) Considered the written and oral representations made at the last review, and the decision made on 2 September 2024.
- h) Disregarded the following:
 - i) The previous commercial character of the area, the nature of the residential accommodation and its history, and that there had been a licensed club on the site for over 40 years;
 - ii) The cost of refurbishment and soundproofing Club Inferno;
 - iii) Nuisance beyond the control of Club Inferno, such as cars in the nearby carpark and members of the public not connected to Club Inferno.
- i) Took the following into account:
 - i) That this was the second review, the last hearing having taken place on 2 September 2024, only nine weeks prior to this hearing. That complaints were received on the weekend directly after that hearing;
 - ii) The history of complaints dating back to April 2023 which were dealt with administratively and at the previous hearing. The previous review in May 2023 resulting in a minor variation in June 2023 and the variation in November 2023 following further complaints;
 - iii) That the condition of 'total noise containment' was added to the Premises Licence as part of the variation dated 2 November 2023. This condition was therefore an existing condition on the licence at the time of the breaches on 7 and 8 September 2024;
 - iv) The language difficulties raised by the representatives of the Licence holder together with the fact that they had the benefit of legal advice at the time of the last hearing and representation at this hearing;
 - v) The length of time the issues had continued, the informal steps taken to deal with the situation and the formal steps taken to deal with the situation (including the last review hearing and previous review application);
 - vi) That the Police had only been involved with Club Inferno three times since the club reopened;
 - vii) Licensing Act 2003, S182 Licensing Act Guidance and Plymouth City Council Licensing Policy, to provide statutory and local guidance in relation to the relevant licensing objective when considering the application and if it finds there were breaches, the range of powers to available to promote the Licensing Objectives.
- j) Prevention of Public Nuisance Licensing Objective:
 - i) The representations from the Environmental Health Department and the residents at this hearing included:

1. Details of two specific occasions where noise from Club Inferno was causing external public nuisance;
2. Noise from Club Inferno continued to cause an external public nuisance;
 - 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 the club itself and noise from its patrons, were relevant under this Licensing Objective;
 - iii) The Committee determined that on 7 and 8 September 2024, Club Inferno breached the term of its Licence that “between the hours of 2300 and 0800 there must be total sound containment within the premises”;
 - iv) The Committee concluded that this evidence, together with the ongoing and historical breaches of this Licence condition, showed that the operation of Club Inferno undermined this Licensing Objective;
 - v) The Committee also determined that there had been a number of other breaches of the Licence Conditions by Club Inferno, as set out by the Police which also undermined this Licensing Objective.
- k) Prevention of Crime and Disorder Licensing Objective:
 - i) The representation from the Police, including evidence on specific breaches of Licence Conditions and Police concerns on how the club was managed following the incident on 8 September 2024 and the findings at its meeting on 27 September 2024, specifically six breaches of the Licence Conditions and inadequate management of the premises;
 - ii) The Committee determined that the Police representations were relevant under this Licensing Objective and determined that the current management and continued breach of these conditions would result in this Licensing Objective being undermined.
- l) The Committee had carefully considered the representations of both the applicant, the premises Licence holder, the local residents and the police to reach this difficult decision;
- m) The Committee found the Licensing Objectives of Public Nuisance and Prevention of Crime and Disorder had been significantly undermined – the Police had highlighted multiple breaches of the Licence and the lives of residents in the immediate vicinity had been affected considerably by noise. The Committee found there was no reasonable explanation by the Licence holders for these repeated failures;
- n) Further, the Committee placed significant weight that that despite the recent review on 2 September 2023, the Public Nuisance Objective continues to be undermined despite the Licence holder offering reassurances to address the noise complaints and being served the Committee decision on 5 September 2024;

- o) The Committee's decision could not continue without further Licensing Act 2003 enforcement being taken;
- p) The Committee reviews the history of this Licence to determine the appropriate and proportionate response. It considered what options were open to it to promote the Licensing Objectives whilst balancing the rights of all parties and those affected by Club Inferno;
- q) The Committee was not satisfied that additional conditions, amendment to hours of operation, removing licensable activities or the current DPS would prevent the Public Nuisance Objected from being undermined in this case. Club Inferno had failed to engage with informal attempts to promote this Licensing Objective and has continues to breach clear conditions that were attached to its Licence;
- r) The Committee concluded that the only way to prevent the Public Nuisance Licensing Objective from being undermined in this case was to revoke Club Inferno's Licence.

The Committee agreed to revoke Club Inferno's Premises Licence.

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