

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE MEETING held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 2pm on 6 OCTOBER 2014**

Present: Councillor D Perry (Chairman)
Councillors M Lemon, J Loughlin and J Salmon.

Officers: A Lee-Moore (Principal Environmental Health Officer), M Perry (Assistant Chief Executive – Legal), A Rees (Democratic Services Support Officer) and S Williams (Enforcement Team Leader).

Also present: Mr Kienlen and Mr Stringer (Axe Pub Ltd), Mr Sparrow (Essex Police) and Mrs Newman.

LIC39 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC40 APPLICATION FOR REVIEW OF A PREMISES LICENCE

The Enforcement Team Leader said the original application for a licence was submitted on 23 August 2005. As representations were made, a hearing was held on 26 September 2005 where the licence was granted subject to conditions. The licence allowed for the following licensable activities:

- a) The sale by retail of alcohol for consumption on or off the premises – Monday to Wednesday from 10:00hrs to 12 midnight, Thursday 10:00hrs to 01:00hrs, Friday and Saturday 10:00hrs to 01:00 hrs, Sunday 10:00 hrs to 12 midnight.
- b) An indoor sporting event – 19:00hrs start for finals to 12 midnight finish.
- c) A performance of live music (indoors and outdoors) – Monday to Sunday 19.00hrs to 12 midnight. 12 noon start on all Bank Holidays and New Year's Eve to 12 midnight finish.
- d) Any playing of recorded music (indoors and outdoors) – Monday to Sunday 19:00 hrs to 12 Midnight. 12 noon start on all Bank Holidays and New Year's Eve to 12 midnight finish.

The licence also contained the following conditions:

- a) Strong management controls to be in place.
- b) Effective staff training to cover under-age drinking, anti-social behaviour, drunkenness on and off the premises, use of drugs and the protection of children from harm.
- c) Responsible management of the premises to be in place.
- d) Capacity limits to be identified and adhered to.
- e) Proof of identification scheme to be in place.
- f) Litter bins to be available outside the premises for use.
- g) Car park and entrances to be well lit.

- h) Staffing levels to be adequate for capacity and trade.
- i) Effective management checks on all internal and external trading areas in and outside of service times to take place.
- j) All services, appliances and equipment to be checked and certified.
- k) Training and supervision of staff to ensure strong visible management during all service times.
- l) Loitering on the premises to be actively discouraged.
- m) Management of staff and customers arriving and leaving the premises.
- n) Sufficient staff to secure the protection of children to be on duty.
- o) Children allowed only in the dining area until 10.00pm.
- p) Children must be accompanied by an adult.
- q) Table service to be provided in the dining area to ensure children do not need to leave the table.
- r) The performance of live music and the playing of recorded music outdoors to end at 23:00hrs.
- s) Prominent and clear notices to be displayed at all exits requesting customers to leave the premises and area quietly.
- t) A responsible member of staff shall assess regularly noise from the premises during amplified and live music events. Steps shall be taken to reduce the level of noise where it is likely to cause disturbance to local residents.
- u) Doors and windows to be kept closed except for access and egress when live or recorded music is being played or performed.
- v) Drinks shall not be consumed outside the premises except for in designated areas and in no event between the hours of 23:20hrs and 10:00hrs.

The Enforcement Team Leader said the licence was transferred from Greene King Ltd to Axe Pub Ltd on 20 March 2013. Mr Stringer was the Designated Premises Supervisor. Since Mr Stringer had taken over the premises, the Council had received a number of complaints by members of the public. Most of these related to excessive noise and anti-social behaviour. Following these complaints, the Council's Environmental Health Department set up noise monitoring equipment in a nearby house. This equipment had detected numerous incidents of excessive noise.

The Council and the Police made contact with the licence holder via writing and a number of meetings to discuss the issues surrounding the complaints. They also requested that the conditions of the licence were adhered to.

Mr Kienlen was appointed manager of the pub at the end of April 2014. Prior to working at the Axe, Mr Kienlen was the Designated Premises Supervisor at the White Horse, Newport, Essex. He held a personal alcohol licence, number 649, which was granted on 31 March 2010 for a period of 10 years.

The Enforcement Team Leader said representatives of the Council and the Police met with Mr Kienlen on 9 June 2014, where they discussed the installation of CCTV, closer supervision of patrons leaving the premises, the volume of noise and bass sensitivity, the number of planned events and noise from the garden area.

A notice of review was issued by the Council's Environmental Health Department on 19 August 2014, which was displayed outside the premises and on the Council's website. It requested representations to be made in writing between 19 August 2014 and 15 September 2014. Two representations were received by the Council. The Committee could make the following decisions for the review:

- Allow the licence to continue unmodified.
- Modify the conditions of the licence.
- Modify the conditions of the licence for a period not exceeding 3 months.
- Exclude a licensable activity from the scope of the licence.
- Exclude a licensable activity from the scope of the licence for a period not exceeding 3 months.
- Suspend a licence for a period not exceeding 3 months.
- Revoke a licence.
- Remove the Designated Premises Supervisor.

When reviewing a licence, due regard had to be given to the Council's Licensing Policy and the Secretary of State's Guidance issued under Section 182 Licensing Act 2003.

The Principal Environmental Health Officer said the application for a review of the premises licence was submitted due to failure to comply with licence conditions relating to the prevention of public nuisance. The Council had received complaints from ten separate households. Widespread disturbance had been reported by residents over the last 18 months, in part due to music not being adequately contained within the premises. Additionally, complaints had been made relating to anti-social behaviour from customers in the garden area and from those leaving the premises.

Annexes 2 and 3 of the premises licence, dated 6 November 2013, contained provisions for the prevention of public nuisance. These were carried over from the original licence which had been granted in 2005.

The Principal Environmental Health Officer outlined the 16 breaches of the licence relating to Annex 2. These related to excessive noise from customers as well as people outside the premises. There were also breaches under Annex 3 of the conditions. These included failure to display notices at all exits requesting customers left quietly, numerous incidents of excessive noise, failure to keep windows and doors closed when live music was being played and a fight in the pub's car park on New Year's Day 2014.

The Principal Environmental Health Officer suggested the conditions in Annex 3 should be removed and replaced with the following conditions:

- Opening hours 10:00 to 23.00hrs Monday to Sunday.
- No regulated entertainment shall take place outdoors.
- Music events to be limited to 6 in any 12 month period.
- The licensee or representative shall conduct assessments of the noise from the premises on every occasion the premises are used for regulated entertainment. The assessment shall be carried out not

less than once in every 60 minutes before 23.00 (and not less than once in every 30 minutes after 23.00 if closing time not reduced). The assessment shall include sound level measurements and written records of the levels, time and location shall be made in a logbook and made available to the Licensing Authority.

- Measures shall be taken to ensure the noise level from regulated entertainment does not cause an increase of more than 10dB in the LA90(5min) when compared with the existing equivalent LA90(5min) without the entertainment (A more stringent noise level would be needed after 23.00 if closing time is not reduced). The noise levels for the purpose of complying with this condition are to be taken at two points :
 1. At the boundary with 58 Ashdon Road adjacent to The Axe building
 2. On the pavement immediately opposite the Axe building
- All windows and external doors must be kept closed except for access and egress when regulated entertainment is taking place.
- Staff to be given adequate training and supervision on their responsibilities for preventing nuisance arising from the premises including garden area and car park.
- Staff are to be deployed at the external doors and car park to ensure customers leave the premises quickly and quietly.
- Designated taxi operators are to be nominated for the use of staff and customers. The company's number is to be displayed on the premises. The operators are to be required to arrive and depart as quietly as possible and not to use their audible warning instrument or leave their vehicle with the engine running whilst waiting.
- CCTV is to be installed, maintained and operated around the premises to assist in preventing rowdiness and antisocial behaviour by customers at or leaving the premises. The images recorded by the CCTV system shall be retained in unedited form for a period of not less than 31 days.
- Prominent and clear signage shall be displayed close to exit doors and car park exit asking patrons to leave the premises and area quickly and quietly.
- The designated premises supervisor or his representative shall ensure that providers of music announce at least twice before the end of their act a request that patrons leave quickly and quietly.

The Principal Environmental Health Officer said that following these complaints, she liaised with the Council's Licensing Department and the Police to discuss the complaints with the licence holder. There was continued correspondence between herself and the licence holder from October 2013 to July 2014. The licence holder agreed to lower the volume of music after 11pm and stated he would install CCTV in the outside area.

Mr Kienlen was appointed manager of the Axe in April 2014. Subsequently, a meeting was held in June 2014 with him, the Principal Environmental Health Officer, Mr Sparrow and D Scales (UDC Enforcement Officer), where the following matters were discussed; CCTV installation, closer supervision

of patrons who were leaving, volume of music and bass sensitivity, number of events planned and noise from the garden area.

The Principal Environmental Health Officer said noise monitoring equipment had been installed in a nearby property to monitor levels of an event on 26 July 2014. The monitored recording levels of the music up to 11pm averaged 50 dB over five minute periods. The monitor also recorded the music itself, which featured a prominent bass line which could easily penetrate properties at a distance due to its low frequency. Noise from customers was also captured until 1.17am.

Residents had provided numerous written statements, which were attached to the report, detailing multiple incidents of excessive noise and anti-social behaviour. It was apparent the conditions of the licence were not being complied with. The conditions of the licence needed to be fully reviewed in order to reflect the Council's current Licensing Policy.

Mrs Newman said she did not find music being played to be a prevalent issue. She was more concerned with excessive noise caused by customers, both within and leaving the pub.

Mr Stringer said he had bought the pub when it was run down and wanted to turn the pub into a community asset. The complaints that had been made were largely nothing to do with the pub itself. Most of the noise was caused by people who were walking home from other pubs. He had been in contact with the Police and had acted accordingly to advice that had been received by turning music down.

Mr Kienlen said there had been no outdoor live music since last year. This had been done in order to appease neighbours, as it was particularly difficult to regulate noise levels for outdoors events. All staff were well trained and there had not been a single incident within the pub. Some of the complaints were spurious, for example, there had never been an incident of beer barrels being rolled down the street. At closing time, all staff escorted patrons out of the pub and reminded them to be quiet. Additionally, staff patrolled the garden area every ten minutes in order to keep noise levels down.

He had been taking regular noise level readings and had contacted the Principal Environmental Health Officer in order to find out the legal noise limit. He had been told to find out the ambient noise level reading and then to ensure noise levels did not exceed this level by 10dB. The average ambient reading was around 47dB and noise levels did not exceed 57dB.

In response to questions by members, Mr Kienlen said he had often been woken up by people walking past the pub after it had been closed for over an hour. The Police had only ever been called to the pub on one occasion, by Mr Kienlen, after a woman threw a metal pole through one of the pub's windows. She had subsequently been banned from all pubs within the town. The bouncy castle in the garden area was always deflated after 8pm, however, there had been one complaint about noise caused by the castle's fan.

Noise levels were monitored regularly and people were asked to move inside after 11.20pm. However, it was a requirement by law to provide an outside space for people to smoke. In these instances customers were asked to re-enter the pub once they had finished smoking. Broadly speaking, he did not agree with the Principal Environmental Health Officer's suggested conditions. Installing CCTV was unlikely to solve any problems as other measures were already in place. The suggested reduction in opening hours would cause the pub to close down.

Mr Kienlen said that when the pub was required to close its doors and windows, the pub used mist fans in order to keep the temperature down. The pub was not normally busy on weekdays and so only one member of staff was required. At weekends the pub tended to have three or four members of staff on duty.

The Principal Environmental Health Officer said the noise readings taken by the Environmental Health department differed from the readings taken by Mr Kienlen. They had found that ambient noise levels were around 38-40dB, which was consistent with other similar areas.

The Assistant Chief Executive – Legal advised the Committee there had been no breach of serving conditions. Furthermore, although the conditions imposed at the time of granting the licence were in line with guidance received at the time, it had now been accepted that much of the guidance was too vague to be enforceable. It was not clear, for example, how “strong management” could be reasonably defined.

Additionally, the conditions on live music were no longer relevant as it was no longer necessary to apply for an event licence provided any music ended before 11pm where there were fewer than 200 people attending. A noise level of 34dB was part of the Council's licensing policy due to the Noise Act 1998. If Mr Kienlen believed that the 34dB limit was inappropriate then it was up to him to demonstrate to the Council why this was the case.

The Committee left the room at 3.05pm so they could consider their decision. They returned at 4.30pm.

DECISION

Councillor Perry read the following statement. “The Axe public house in Ashdon Road Saffron Walden has been licensed for many years. It was licensed under the Licensing Act 1964. In 2005 it applied to this council for a licence under the Licensing Act 2003 during the transitional period. It included in its application a request for a variation of the conditions under its 1964 Act licence. Objections were received and following a hearing a licence was granted with conditions. The terms of the licence and condition are set out in the officer's report at paragraphs 3 – 4. As a result of the Live Music Act 2012 the conditions referred to at paragraphs 6.t) and 6.u) no longer apply between 8 am and 11 pm when live entertainment is being provided.

In March 2013 the ownership of the premises changed from Greene King Ltd to Axe Pub Ltd. Mr Stringer was appointed the designated premises supervisor. Since that time the Environmental Health Department has received a number of complaints concerning the premises. These are summarised in the officer's report at paragraph 6 and expanded upon in the supplemental statement of Mrs Lee-Moore. Some of these complaints may be contributed to breaches of conditions attached to the licence, for example failing to display signage, allowing windows and doors to be open when entertainment is provided and permitting drinking outside after 23.20. Other complaints arise from the management of the premises and the conduct of customers.

The conditions attached to the licence reflected guidance available at the time it was granted. However since then there have been a number of cases and it is now established that to be enforceable by way of a prosecution condition must be clear and certain. Many of the conditions on the licence are uncertain, for example the first condition requiring "strong management" to be in place does not define what is meant by strong management. With regard to the noise condition this requires a subjective judgement of what is likely to cause a disturbance to residents. Given the wording of the conditions it is not possible to bring a prosecution for the offence of carrying on a licensable activity otherwise than in accordance with an authorisation. The Environmental Health Department as a responsible authority under the Licensing Act 2003 has therefore applied for a review of the premises licence. Since that application was made a Mr Steve Kienlen has been appointed designated premises supervisor. The officer's report states that Mr Kienlen was appointed as manager of the premises in April 2014 but he did not become designated premises supervisor until more recently. The committee notes that 9 of the 22 complaints of nuisance referred to in paragraph 6 of the officer's report occurred in the 4 month period between Mr Kienlen's appointment as manager and the application for the review.

The committee having considered all the evidence is satisfied that the premises do on occasions cause a public nuisance to local residents by virtue of excessive noise from entertainment events and rowdy behaviour by customers. The licence holder and designated premises supervisor both deny that the anti-social behaviour complained of comes from the premises. However whilst there may be an element of disruption from other sources the committee finds on the balance of probabilities that most of the anti-social behaviour complained of is caused by customers from the Axe. Within the documents supplied to the committee there are a number of incidents which residents are able to attribute directly to the pub and it can be no coincidence that the complaints only arose after the pub was acquired by its present owner. Mrs Lee-Moore and the police have tried to persuade the licence holder to take steps to control the nuisance but these efforts have proved unsuccessful.

In dealing with this review the committee is required to have regard to the application and any relevant representations and then to take such of the

steps referred to in s.52(4) Licensing Act 2003 as it considers appropriate for the promotion of the licensing objectives, the objective of the prevention of public nuisance being the critical objective here.

The steps which can be taken are to modify the conditions of the licence; to exclude a licensable activity from the scope of the licence; to remove the designated premises supervisor; to suspend the licence for a period not exceeding three months; to revoke the licence.

Revocation and the exclusion of a licensable activity from a licence are draconian steps and the committee would not usually consider taking such action on a first application for review. The removal of the designated premises supervisor would only be appropriate where that individual has demonstrated lack of management ability so that he or she is not fit to be the DPS. Whilst problems have continued to occur since Mr Kienlen was appointed manager the committee note from the officer's report that Mr Kienlen was previously DPS for other premises within the district and no issues appear to have arisen there. There is insufficient evidence for the committee to conclude that Mr Kienlen's position as DPS should not continue. Suspension is appropriate in 2 circumstances only. The first is where there are issues which could be resolved in a fairly short space of time, for example the installation of sound proofing or staff training. Here a suspension may be appropriate to enable the necessary steps to be taken. The other circumstance where a licence may be suspended is to act as a deterrent, for example in response to under age sales. Those considerations do not apply here.

The committee does however consider it appropriate to amend the conditions of the licence so as to promote the licensing objective of the prevention of public nuisance. In determining what conditions may be appropriate the committee is required to have regard to guidance issued by the secretary of state under s.182 Licensing Act 2003 and to its own licensing policy. The government guidance states that any conditions should be appropriate, proportionate and justifiable in meeting the licensing objectives. More specific sections of the government guidance are appended to the officer's report and the relevant sections of the council's policy appear in paragraph 14 of the report. The committee has had regard to all these matters.

Mrs Lee- Moore suggests a number of conditions on the licence be varied. Her proposals are that all of the conditions in Annexe 3 of the licence be deleted and replaced with the following:-

1. Opening hours 10:00 to 23.00hrs Monday to Sunday.
2. No regulated entertainment shall take place outdoors.
3. Music events to be limited to 6 in any 12 month period.
4. The licensee or representative shall conduct assessments of the noise from the premises on every occasion the premises are used for

regulated entertainment. The assessment shall be carried out not less than once in every 60 minutes before 23.00 (and not less than once in every 30 minutes after 23.00 if closing time not reduced). The assessment shall include sound level measurements and written records of the levels, time and location shall be made in a logbook and made available to the Licensing Authority.

5. Measures shall be taken to ensure the noise level from regulated entertainment does not cause an increase of more than 10dB in the LA90(5min) when compared with the existing equivalent LA90(5min) without the entertainment (A more stringent noise level would be needed after 23.00 if closing time is not reduced). The noise levels for the purpose of complying with this condition are to be taken at two points :
 1. At the boundary with 58 Ashdon Road adjacent to The Axe building
 2. On the pavement immediately opposite the Axe building
6. All windows and external doors must be kept closed except for access and egress when regulated entertainment is taking place.
7. Staff to be given adequate training and supervision on their responsibilities for preventing nuisance arising from the premises including garden area and car park.
8. Staff are to be deployed at the external doors and car park to ensure customers leave the premises quickly and quietly.
9. Designated taxi operators are to be nominated for the use of staff and customers. The company's number is to be displayed on the premises. The operators are to be required to arrive and depart as quietly as possible and not to use their audible warning instrument or leave their vehicle with the engine running whilst waiting.
10. CCTV is to be installed, maintained and operated around the premises to assist in preventing rowdiness and antisocial behaviour by customers at or leaving the premises. The images recorded by the CCTV system shall be retained in unedited form for a period of not less than 31 days.
11. Prominent and clear signage shall be displayed close to exit doors and car park exit asking patrons to leave the premises and area quickly and quietly.
12. The designated premises supervisor or his representative shall ensure that providers of music announce at least twice before the end of their act a request that patrons leave quickly and quietly.

The licence holder was not prepared to agree to any of these.

The committee has considered these suggested conditions in turn.

1. Opening hours 10:00 to 23.00hrs Monday to Sunday. Mr Kienlen said that the reduction in hours proposed would cause the pub to close. That is a relevant consideration. However the residents also have a right to a peaceful existence. The committee will not reduce the hours for every night but does notice a significant number of complaints arising well after midnight and some beyond 1 am. To reduce the impact on residents the committee consider it appropriate to amend the licensing hours to 10 – midnight Monday to Sunday.
2. No regulated entertainment shall take place outdoors – as Mr Kienlen acknowledged it is not possible to contain noise with outdoor events. The committee consider that entertainment outdoors in a residential area is not appropriate. This condition cannot prevent such events occurring as the licence holder can serve temporary events notices but at least the condition will ensure that the number of such events is limited to the statutory maximum, currently 12 per annum but to be increased to 15 per annum in the near future.
3. Music events to be limited to 6 in any 12 month period. The committee considers this strikes a fair balance between the commercial interests of the licence holder and the rights of local residents. In setting this limit the committee acknowledges that this will permit a maximum of 18 events a year as the premises licence holder may serve up to 12 temporary events notices in addition to the 6 events permitted by the licence.
4. The licensee or representative shall conduct assessments of the noise from the premises on every occasion the premises are used for regulated entertainment. The assessment shall be carried out not less than once in every 60 minutes before 23.00 and not less than once in every 30 minutes after 23.00. The assessment shall include sound level measurements and written records of the levels, time and location shall be made in a logbook and made available to the Licensing Authority. The committee considers this to be proportionate to monitor noise to prevent a nuisance to neighbours.
5. Mrs Lee-Moore asked for a condition that measures shall be taken to ensure the noise level from regulated entertainment does not cause an increase of more than 10dB in the LA90(5min) when compared with the existing equivalent LA90(5min) without the entertainment She said that a more stringent noise level would be needed after 23.00 if closing time is not reduced. The committee do not agree. The council has adopted a licensing policy which sets the level of noise as a starting point at 34 decibels. The council is prepared to depart from that level in appropriate cases but the policy is quite clear that if an applicant or a licence holder

on review wish to contend for a higher level, then they should provide a noise survey to support that contention. No such survey has been supplied and there is therefore no evidence upon which the committee can base a departure from its policy. There will therefore be a condition that noise from regulated entertainment shall not exceed 34 decibels:

- a. At the boundary with 58 Ashdon Road adjacent to The Axe building
- b. On the pavement immediately opposite the Axe building

It is open to the licence holder to apply for a variation of this condition supported by a noise survey as required by the council's policy at any time in the future.

6. All windows and external doors must be kept closed except for access and egress when regulated entertainment is taking place is a standard condition and appears in the current conditions although the DPS acknowledges that it has been breached on at least one occasion.
7. The committee will also require as a condition that staff to be given training and supervision on their responsibilities for preventing nuisance arising from the premises including garden area and car park and that training records be produced to the council on request.
8. Staff are to be deployed at the external doors and car park to ensure customers leave the premises quickly and quietly is clearly an acceptable condition and as the committee was told that this is the practice at the premises in any event compliance should not cause any difficulty.
9. The committee will require that designated taxi operators are to be nominated for the use of staff and customers. The company's number is to be displayed on the premises. The operators are to require their drivers to arrive and depart as quietly as possible and not to use their audible warning instrument or leave their vehicle with the engine running whilst waiting.
10. The DPS asked what CCTV would prevent or solve. In the experience of the committee the very presence of CCTV acts as a deterrent. It will also enable the staff to better supervise the premises including the garden given the limited number of staff we were told are employed at the premises. Finally it will be of benefit to the licence holder if there are future allegations of anti-social behaviour in demonstrating that the premises were not the source of such conduct, if in fact that is the case. Therefore CCTV is to be installed, maintained and operated around the premises to assist in preventing rowdiness and antisocial behaviour by customers at or leaving the premises. The images

recorded by the CCTV system shall be retained in unedited form for a period of not less than 31 days

11. Prominent and clear signage shall be displayed close to exit doors and car park exit asking patrons to leave the premises and area quickly and quietly should have been provided but is absent from the premises. This condition is therefore carried forward.
12. Finally the suggestion that the designated premises supervisor or his representative shall ensure that providers of music announce at least twice before the end of their act a request that patrons leave quickly and quietly is entirely appropriate and will be added.

Conditions 2 – 6 and 12 above are imposed by virtue of s.177A(4) Licensing Act 2003 and therefore section 177A(1) no longer applies to the licence. These conditions will replace the current conditions in Annexe 3 of the licence apart from condition 6 which shall be retained.”

The Assistant Chief Executive – Legal said the decision would be placed on the Council’s website. He would write to Mr Stringer and Mr Kienlen explaining their right to appeal the decision made by the Committee. A copy of the decision would be provided with this correspondence.

The meeting ended 4.45pm.