

Appendix E

LICENSING ACT 2003	
Premises : <i>Axe PH 60 Ashdon Road Saffron Walden CB10 2AT</i>	From: <i>Ann Lee-Moore Environmental Health Officer</i>
Summary of Representation: <i>Concerns that the application for variation if successful, is likely to cause a public nuisance.</i>	

The Environmental Health Service has concerns that there is potential for a public nuisance to occur if the application to vary the premises licence is approved as it stands.

Background

The Axe PH is surrounded on all sides by residential properties. The properties are not subject to noise from heavy traffic or other commercial activities. As a result, the public house must be operated with sensitivity to the amount of noise which may be produced from amplified music and from customers at or leaving the premises.

The current conditions contained in Annex 3 of the premises licence were applied on 31st October 2014 following a review of the premises licence on grounds of failure to comply with the conditions relating to the licensing objective of prevention of public nuisance.

The review followed a time when activities at the premises were causing widespread disturbance to a large group of residents in the vicinity of the premises, due to excessive noise from entertainment events and rowdy behaviour by customers. Complaints were received by the Environmental Health Service from ten separate households.

Further conditions on the licence were imposed following the review, to ensure the licensing objective is met by the incumbent and any future licence holder.

The level of complaints concerning the premises has reduced since the current managers have been in place, although sporadic complaints from neighbours have still been received. Complaints received within the last 12 months under the current management are summarised below:

June 2019 : complaints of loud disco type music playing outside on a Sunday, from 14.00 to 19.00hrs , followed by noise and disturbance from patrons in the garden area, including foul language and shouting

April 2019 : complaint of loud music, acknowledged that the landlords were better at responding to residents than previously (for example turning the bass down), but that there was still significant disturbance to residents from customers arriving and leaving the pub, especially during events. The complainant went on to advise that the bass could still be heard through shut windows, drawn curtains, earplugs and pillow over the head. Also

included in the complaint was noise from customers arriving and leaving, and evening conversations in the beer garden and car park. This noise was said to echo around the whole neighbourhood, so even if people speak at normal volume, it is very intrusive late at night, when everything else is quiet.

February 2019 : complaint of anti-social rowdy behaviour of customers, regular noise when people are leaving, from raised voices, slamming of car doors etc, also violence and foul language. Occupier of house had to move to the back room of the house to escape the disruption to sleep caused by the activities associated with the pub.

October 2018 : on-going problems of rowdiness & anti-social behaviour. Pub responsive but problem remains with the client base and the fact that the pub doesn't have enough staff to monitor all the areas.

Removal of conditions

Considering the specific conditions which the application seeks to remove:

Condition 1 : The applicant has asked for the condition to be removed but replaced by a condition with the same time restrictions for Sun-Thu but removal of "designated place", and to extend the outside drinking hours to midnight on Friday and Saturday evenings.

By restricting the location and hours when drinks can be consumed outside, the condition limits the potential for raised voices and rowdy behaviour causing a disturbance to neighbours. The likelihood of disturbance would be increased by allowing later outside drinking on Friday and Saturdays. There are no proposals submitted by the applicant to manage or restrict noise arising from changes to the condition, therefore removal of the condition is not supported.

Condition 2 : It is not possible to contain noise from outdoor events. Outdoor entertainment in a residential area has the potential to cause widespread disturbance. The condition does not prevent such events occurring as the licence holder can serve temporary events notices, but it does limit the number of such events to the current maximum of 15 per annum under TENs. Evidence from complaints concerning outdoor music which has not fallen within the licensing regime demonstrates that use of the outdoor area continues for some time after music has ended, with associated raised voices. There are no proposals submitted by the applicant detailing how the noise will be successfully managed to prevent public nuisance, therefore removal of the condition is not supported.

Condition 3 : The limit of 6 music events brings the total permitted events to 21 events in any 12 month period if the full quota of TENs are served. Limits under the licence reduces the risk of disturbance to neighbours. Removal of the limits is therefore not supported

Condition 5 : The noise level imposed by the committee following review was transposed from the licensing policy in place at the time, which set the level of noise from events as a starting point at 34 dB. If the holder wished to contend for a higher level they were obliged to provide a noise survey to support that contention. No such survey was been supplied. The existing condition effectively means that no sound from music shall be audible at the neighbouring properties, as the 34 dB level is below the ambient noise level. Assessing

compliance with this condition has proved to be impracticable. It should be noted that music noise in addition to ambient noise has been monitored well in excess of this level. Sound level recordings by management for events held following the review show ambient noise levels at 19.30, prior to the start of an event, to be in the range of 44-54 dBA. This level accords with monitoring carried out by the Environmental Health service.

Removal of condition 5 renders condition 4 inappropriate, as there are no criteria for management to measure against. There is no application to have condition 4 removed, and it is proportionate to monitor noise, however guidelines are needed to assess whether the monitored levels are suitable to avoid disturbance to neighbours.

Removal of condition 5 removes any action to be taken to reduce noise levels from music. A condition without set noise levels requires a subjective judgement of what is likely to cause a disturbance to residents.

Complaints often refer to the inability to escape bass music. It should be noted that the bass line of popular music is dominated by low frequency. Low frequency noise is characterised by long wavelength sounds that travel proportionately much further than higher frequency sound in the treble region, and are also easily transmitted through structures. To reduce the transmission, a very high standard of sound insulation is required, without leaks from the building such as door and window opening.

A decibel limit does not take account of the nature of the noise being generated, in that one type of music may be more disturbing than another, and fails to control the predominant bass line in some music unless a further frequency specific limit is applied. This then becomes difficult for the manager to monitor without specialist monitoring equipment. It fails also to take account of the ambient noise. Traffic is the predominant source of ambient noise in Ashdon Road, and noise levels fall as traffic reduces into the evening, making music noise more noticeable. Hence a noise level set relative to ambient noise prevailing at the time of monitoring may be more appropriate.

Conclusion

Relaxation of the licence controls removes the obligation of the licensee to serve TENs for events which have the potential to cause disturbance. Whilst this obligation remains, the Environmental Health service has the ability to raise an objection to a TEN, should evidence of disturbance be gathered from previous events. The existing conditions have maintained some control of public nuisance and although the level of complaints relating to noise has been low recently, consideration should be given to the possibility that residents have tolerated a degree of disturbance in the knowledge that operational timings and noise controls are in place. This does not translate to grounds for removal of those controls.

Complainants have acknowledged that the current manager is amenable to a request to lower the volume of music, however the current management can be replaced at some future date by management less responsive to neighbours' complaints.

The history of complaints concerning noise and anti-social behaviour associated with the premises has demonstrated that the controls and measures attached to the licence to support the licensing objective of prevention of public nuisance have not always been met, and any relaxation of the controls should be resisted.

Should the Environmental Health and Licensing Committee be minded to approve the application to remove Condition 5, and be in a position to vary or replace Condition 4, it is suggested that the following two conditions are considered :

- 1. A noise management plan shall be submitted to licensing authority within 28 days from the date of this licence for approval by the Licensing Authority. No event involving amplified music shall take place without Licensing authority approval of the noise management plan. The noise management plan shall include details on measures, controls and actions to ensure that the playing of amplified music does not cause a public nuisance. Measures, controls and actions will include an approach to monitoring that also assesses the impact of any noise on neighbouring premises at the start of the regulated entertainment and periodically throughout the regulated entertainment and take any action to ensure compliance with the management plan. The management plan shall ensure a telephone number is made available for local residents to contact in the case of disturbance from noise or anti-social behaviour by persons or activities associated with the premises. The telephone number will be a direct number to the management who are in control during opening hours. A record will be kept by management of all calls received, including the time, date and information of the caller, including action taken following the call. Records will be made available for inspection either by any relevant responsible authority throughout the trading hours of the premises. The Premises Licence Holder must comply with the agreed noise management plan at all times during regulated entertainment.*
- 2. The Premises Licensed Holder shall within 28 days of receiving instructions by the Licensing Authority install a noise limiting device to the approval and satisfaction of the Licensing Authority. A noise limiting device (the specification and design to be agreed with Uttlesford District Council's Environmental Health Service) shall be fitted so that all regulated entertainment is channelled through the device(s). The maximum noise levels will be set by agreement with the Uttlesford District Council's Environmental Health Service and will be reviewed from time to time as appropriate. The noise limiting device shall be kept at the settings approved by the Council through an authorised officer of the Uttlesford District Council's Environmental Health Service. The Premises Licence Holder or nominated person shall ensure that the noise limiting device is sealed after commissioning, so that sound operators cannot override the system during the performance of live and recorded music. If deemed necessary, the noise limiting device shall only be reset to a level approved by the Council through an authorised officer of the Uttlesford District Council's Environmental Health Service within 7 days of notification.*