

Licensing Sub Committee (Panel Hearing) Minutes

Date: 12 August 2019

Time: 10.00 - 11.35 am

PRESENT: Councillor A Turner (in the Chair)

Councillors M Clarke and S Graham.

40 INTRODUCTORY REMARKS BY THE CHAIRMAN

The Chairman welcomed everyone to the meeting and following introductions he set out the procedure that would be followed during the hearing.

41 APOLOGIES FOR ABSENCE

None.

42 DECLARATIONS OF INTEREST

There were no declarations of interest.

43 THE ANTELOPE, CHURCH SQUARE, HIGH WYCOMBE, HP11 2BN

The Panel considered an application under s.51 of the Licensing Act for a review of a premises licence in respect of The Antelope, Church Square, High Wycombe, HP11 2BN

Mr Brian Whittall, WDC Licensing Officer, outlined the case to the Panel as detailed in his report, and explained that the premises had operated as a public house within the town centre since 1795 and is a Grade 2 listed building.

An application was received in 2005 during the transition period which included a variation application to extend the licensable and terminal hour until 03:00 hours. The licence was granted in November 2005.

An application was made in 2006 for a premises licence due to substantial changes to the structure of the building (at this time, the Licensing Act did not allow for Minor Variations to be utilised for structural changes). Following representation, the licence was granted on 8 September 2006 with alcohol sales until 02:00 hours and regulated entertainment until 03:00 hours and the previous licence was surrendered.

In the intervening years, a number of applications have been received transferring the licence and appointing a new designated premises supervisor (DPS). In

January 2015 the current DPS – Mark Adkins – was appointed onto the licence and he subsequently applied to transfer the licence into his name in March of the same year.

In July 2016, Mr Adkins applied to vary the premises licence to extend the times for licensable activities until 06:00 hours. Following a hearing, the application was granted with amended conditions as detailed in the decision notice.

Following discussions with Mr Stuart Goodbun, Technical Officer, WDC Environmental Health, in October 2018, a Minor Variation application was received to amend the licence conditions to include the following:

- An off-site limit of 48dB_{Leq15min} shall be set (by Wycombe District Council) for all live and recorded music from the premises. This included both indoor and outdoor noise sources.
- The measurement position for this shall be the junction of Castle Street and Castle Place.
- This level shall be maintained by an internal limiting device installed into the amplification equipment of The Antelope. This limiting device shall remain under control of the premises at all times.

The application was granted and the current premises licence remained as issued on the 19 October 2018.

Mr Whittall explained some Enforcement history, as follows:

1. Advisory notice was issued on 7 June 2018 regarding noise complaints received by members of the public and the tone of advertising of events to be held at the premises.
2. 24 August 2018 – formal warning issued further to CCTV evidence which indicated a breach of the following licence condition:
“Entry to the premises shall be prohibited to the general public after 02:00 hours with the exception of staff and door staff from the premises and other local premises as detailed on a list to be agreed and approved by the Licensing officer prior to the licence being issued.”

It was noted that the door staff member was dismissed as he was seen to be taking bribes to enable a member of the public to enter.

3. Mr Adkins attended a meeting at the council offices on 15 May 2019. At this meeting, Mr Adkins admitted to breaching the conditions of his premises licence and confirmed that he had full responsibility for the management of the premises. On 22 May 2019, a final warning was issued which related to the evening of 11 May 2019 when officers arrived at 20:55 hours at a monitoring point (junction of Castle Street and Castle Place). They noted that music from the premises was audible at this time. Officers observed a noise level at 49.3dB_{15minLeq}, at 20:55 hours and 58.8dB 15min Leq at 23:05 hours, in breach of the licence condition adopted onto the premises licence.

On 22 May 2019, Stuart Goodbun received an email from the licence holder, Mr Adkins, admitting to a breach of his licence conditions in respect to noise levels stating that his monitor, "Was reading as 56 to 60dB when the bands played. I asked the sound engineer to reduce the volume but he could not reduce it by the 10dB required as the drums became the dominant sound."

Investigations remained ongoing into a possible breach of s.136 of the Licensing Act 2003.

The applicant, the Environmental Health Authority (Public Nuisance), applied under S.51 of the Licensing Act 2003 for a review of the Premises Licence on the grounds of the prevention of public nuisance. The application was served in responsible authorities and the licence holder, as required, and it was advertised both at the premises itself and at the Council Offices for the required 28-day consultation period.

Six representations were received from local residents with respect to noise nuisance and crime and disorder, as follows:

Deborah Wixon: We are residence (sic) and have had a lot of noise disruption from the outdoor stage. We don't object to people having a good time, but it does impact on our events in our back garden.

Avril Stone: Would like to complain regarding the volume of noise emanating from The Antelope.when this venue has live music it is unpleasant to sit in back garden because of noise and we have to close our windows. The music at times finishes extremely late at night which also make sleep a problem. The establishment appears to ignore noise levels which are violated to a large degree.

Sue Hynard: We live on the north western side of our street. When we are outside the house we hear the music from the Antelope. It can be a nuisance, but this more depends on what sort of music is being played and the volume at which it is played. I notice from the notice displayed to the public that there are currently conditions on the volume at which can be played. I would be content for the licence to be granted but only if there are strong undertakings that the conditions will be adhered to.

Sarah-Jane Wellington: I would like to put forward my comments in regards to the review of the Antelope pub's outdoor stage licence.

Unfortunately, as we live within a short distance from the town centre, the outdoor concerts have had a serious impact on our ability to enjoy our outdoor space. The noise levels is horrendously high, and it makes it impossible to sit outside on those evenings and even prevents us from leaving a window open on hot nights as they go on quite late and make it impossible to sleep.

Having spoken to neighbours and friends, I know there are residents even closer to the pub who are unable to watch television in their own front rooms if a window is open, as they can't hear it over the noise. Another local business owner who lived above their shop on Castle Street ended up moving because of the frequency and volume of the Antelope events. All Saints Church were unable to hear musicians playing a concert in the same room as it happened to coincide with a Lope Stage

Band night. In addition to coping with the noise, the fact that the bands are performing outside at high volumes means that people who want to go to the gigs but don't want to pay the entrance fee are gathering to dance and spend the night drinking in the graveyard. For anyone whose relatives are buried within this area, this behaviour seems truly disrespectful and hurtful. All of these experiences are annoying and distressing for those affected, and the number of people impacted by the pub's activity is growing daily.

The Antelope pub has completely disregarded any restrictions placed on them by the council in regards to noise, they have shown no concern for the people who live near their premises or for the impact their pub has had on the local environment. Given these facts, it is unacceptable that they should be allowed to continue to operate an outdoor stage in such a populated town centre.

Caterina Dodaro: In regard to the notice of application I would like to express my position as somebody who has been affected on a regular basis.there have been times when I had to switch off tv or radio and listen to THEIR music of whatever the noise. I am glad that something has been done about it and I do hope that he Antelope start taking into consideration other people's lives.

I am sure that they still can have live music, possibility indoors, and let the people who live nearby be able to choose their own entertainment.

It is my sincere hope that repeated failure as stated in the Notice will be taken into account when reviewing this case.

Jenny Ellis: The efforts of new landlord have gone to in order to make this venue a success are much to be admired and I am really pleased how the new publicans have turned round the fortunes of an ailing pub. Unfortunately, sometimes the sound levels of the music have been a bit intrusive. I do not want to see the licence withdrawn, but maybe there could be better monitoring/awareness of the artists of excessive noise levels. I really want to see this venue thrive and I am sure a mutually beneficial way forward can be found.

In relation to the prevention of public nuisance, the national guidance stated:

- 2.15 "The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licenses..."
- 2.17 "Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises."
- 2.19 "Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods."

In relation to the prevention of public nuisance, the WDC policy stated:

3.16 “The Council wishes to protect the amenity of residents and businesses in the immediate area surrounding the licensed premises.”

3.17 “The Authority will particularly take into account the following:

- The measures proposed to prevent noise and vibration escaping from the premises. Such measures may include installation of sound insulation and sound limitation devices;
- Measures proposed to prevent public nuisance from use of outside areas including smoking areas and outdoor events.”

In relation to a Review of a Premises Licence, the national guidance stated:

11.10 “...it is good practice for them (responsible authorities) to give licence holders early warning of their concerns and the need for improvement.”

In relation to a Review of a Premises Licence, the Council’s own policy stated:

8.2 “At any stage following the grant of a premises licence, however, a responsible authority an interested party including a local Councillor may ask the licensing authority to review the licence because of a matter arising at the premises in connection with one of the four licensing objectives.”

8.5 “In order to successfully bring a review of a licence, evidence will be required of breaches of one of the licensing objectives. As a result, it may assist interested parties to liaise with the relevant responsible authority prior to submitting an application for review.”

In relation to powers of a licensing authority on the determination of a review, the national guidance stated:

11.18 “...where responsible authorities, such as police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.”

11.20 “In deciding which of these powers to invoke, it is expected that licensing authorities should, so far as possible, seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes.

The Panel was obliged to determine this application with a view to promoting the licensing objectives which were:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Panel was also obliged to have regard to the national guidance and the Council's Licensing Policy. Should the Panel depart from either, it was required to specify its reasons for doing so. The Panel also had a duty to take into consideration all of the representations made and the evidence submitted both written and orally at the hearing.

In promoting the licensing objectives, the Panel could take any of the following steps in relation to the application:

- (a) modify the conditions of the licence;
- (b) exclude a licensable activity from the scope of the licence;
- (c) remove the designated premises supervisor;
- (d) suspend the licence for a period not exceeding three months;
- (e) revoke the licence;
- (f) take no further action or take informal action

The Panel was also required to consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of local residents.

Any decision taken had to be appropriate and proportionate to the objective being pursued. In particular the following should be taken into consideration:

Article 6 – the right to a fair hearing

Article 8 – respect for private and family life

Article 1, First Protocol – peaceful enjoyment of possessions (which could include the possession of a licence).

It was also noted that the Live Music Act 2012 meant that hours were deregulated between 08:00 and 23:00. In 2014, Recorded Music was added to the Act.

Section 1 (4) of the Live Music Act stated “a licensing authority may (without prejudice to any other steps available to it under the Act) add a condition relating to live music.”

Mr Whittall drew the Panel's attention to the map of the premises.

There were no questions for Mr Whittall.

Mr Stuart Goodbun, WDC Technical Officer, Environmental Health explained that he had worked with the licensee following complaints that were received and which led to formulating some conditions from the national and international guidance. The licensee was informally requested to adopt these conditions to give him better control rather than issue a Noise Abatement Notice. In May 2019 a routine inspection across the district was carried out and it was noted that on the 11 May 2019, noise levels – take from the agreed monitoring point – were 48dB between 21:00 and 21:20 which was within the terms of the licence as the noise was emanating from inside the premises. Further readings were taken between 22:16 and 22:50 a reading of 63dB was taken meaning that the noise emanating was significant. Mr Goodbun reported that a local resident was in the vicinity and

invited him to listen to the noise from their living room and bedroom where the noise was found to be significant meaning the resident could not enjoy peace and quiet in their own home.

Following that 11 May visit, the licensee was invited to the council offices for meeting with Mr Goodbun and Mr Whittall. It was found that statutory nuisance had occurred and on 22 May 2019 a Notice of Noise Abatement was served on the licensee and it was noted that no appeal was received.

During Frog Fest which took place on 26 May 2019 a static monitor had been placed in the town centre to monitor noise during the day and although a noise level of 33dB was recorded it could not be proved where the noise had come from as the monitor was unattended. Further monitoring was carried out by Mr Tony Cheung, WDC Pollution Technical Officer and found noise levels to be at 63dB and 64dB after which a Noise Abatement Notice was served. Further evidence was required and both Mr Cheung and Mr Goodbun attended the neighbour's property – whose property Mr Goodbun had previously been inside and measured an average of 58dB. This was therefore a breach of the licensee's conditions. Mr Goodbun believed that the licence holder and the DPS could not control the garden area noise and during informal discussions with the licence holder, the question of live music was brought up, particularly in relation to drums due to Hi-Hat cymbals which were loud in terms of decibel levels. The conditions outlined in the licence and Noise Abatement Notice had been comprehensively breached. The current DPS could not suitably control activities at the premises and Mr Goodbun submitted that the use of the garden should be further controlled by the licensing regime. Mr Goodbun was unable to offer further guidance to Mr Adkins once the Noise Abatement Notice had been issued however he had suggested to the licence holder that he seek independent reputable advice on how best to control the noise emanating from his premises.

In answer to questions, Mr Goodbun confirmed that he had visited in the premises in the autumn of 2018 when their sound equipment was installed and tested. It was confirmed that on the 11 May the DJ playing at the event had unplugged the 'house' equipment and plugged in his own equipment therefore by-passing the noise limiter and was not controlled by the licensee.

Mr Mark Adkins, the Licence Holder of The Antelope, stated that he had previously been a doorman for 27 years and he had never once taken a bribe. He had also worked for Heathrow Security and worked as a doorman at The Antelope and therefore believed he could 'turn it around' to be a popular place to go, live music would be a part of that turnaround. Mr Adkins explained he had purchased a noise limiting device and the inside limiter worked perfectly. He explained that the limiter was password protected and that only his sound engineer knew that password and therefore he was unable to change that password. He agreed that his doorman had accepted a bribe although he was unaware of that until the police arrived at the premises; Mr Adkins dismissed the doorman, and his colleague who had taken some of the bribe, instantly in front of the police, so when a letter arrived from the police after the incident, he believed that no further action was required.

Mr Adkins explained that he had worked with Mr Goodbun. The former manager had dealt with the Church badly but there was a better relationship now and he and the Church emailed each other to ensure that events did not clash. Unfortunately the events on the 11 May had been overlooked until the day before. On the 11 May, when the clash occurred, Mr Adkins explained that his doorman at the fire exit ensured that no noise emanated from the premises during the concert at the church as the orchestra playing was being recorded. However, unknown to Mr Adkins, who was attending the church to liaise with the organisers, the music at The Antelope had been taken outside, which is when the DJ unplugged the 'house' system and plugged his own system in. Mr Adkins explained that he had a handheld monitoring device and also noted that Mr Goodbun was monitoring the noise levels at the agreed monitoring point where it was noted noise levels were being breached. Mr Adkins accepted that the outside music was being played above the agreed limit.

Mr Adkins explained that the premises had hosted around 400 people during Frog Fest which would have led to increased noise levels.

He also realised that drums made more of a noise impact particularly when a Hi-Hat cymbal was hit – it was noted that when a drum was hit the noise did not linger compare to a Hi-Hat cymbal. Mr Adkins had undertaken some research into how to alleviate the level of noise from a drum kit and to that end had ordered a bespoke drum booth which was due to be delivered imminently. Guitars and vocals only are fed through the sound system along with bass drums. Bands sign a form agreeing not to tamper with the sound limiter.

Mr Adkins explained that he had five more 'gigs' booked before the end of March 2020 which is when his tenancy would end. He stated that if he could not come to an agreed with the Council in relation to a planning application he had submitted to build against the shared wall with the church, he would not renew his lease.

In response to questions, Mr Adkins explained that the drum booth had a padded back to it and Perspex front and was enclosed. Drums booths were becoming more popular due to research being undertaken into hearing damage caused to other band members by drums. Mr Goodbun expressed some doubt that the sound level would be brought down sufficiently to remain within the agreed sound levels which were conditioned on the licence. Mr Whittal noted that the licence condition was not to exceed 48dB and that the Licensing Authority sought compliance, however it was up to the licence holder how they complied.

The Chairman thanked everyone to attending the hearing and explained that he and the Panel would go into private session to make their decision.

The hearing closed at 11:16

During their deliberations the Panel took into consideration all the written and oral evidence presented at the hearing and agreed that no live music would be permitted in the outside area of the premises.

RESOLVED: that no live music would be permitted in the outside area of the premises.

Chairman

The following officers were in attendance at the meeting:

- Kiran Khanna - Principal Solicitor
- Brian Whittall - Licensing Officer
- Liz Hornby - Senior Democratic Services Officer
- Hilary White - Paralegal