
DACORUM BOROUGH COUNCIL

LICENSING OF ALCOHOL AND GAMBLING SUB-COMMITTEE

9 JUNE 2014

Present –

MEMBERS:

Councillors Mrs Green (Chairman), G Sutton and Taylor

OFFICERS:

S Scrowther	Solicitor
S Taylor	Lead Licensing Officer
Tony Cawthorne	Environmental Health Officer
P Bowles	Member Support Officer

Other Persons Present:

Mr R Rule	Applicant
Mr G Loughran	Applicant
Mr C Trott	Interested party
Mr R Dockerill	Designated Premises Supervisor, the Old Bell, High Street, Hemel Hempstead
Mr P Warne	Solicitor TLT Solicitors, representing the Premises Licence Holder
Mr J Schwartz	Spirit Pub Company (Services) Ltd

The meeting began at 2.00 pm

1. INTRODUCTIONS

The Chairman introduced herself, the Councillors on the Sub-Committee and the officers present. The Chairman then asked the other persons present to introduce themselves.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTERESTS

No interests were declared.

The Chairman informed the Sub-Committee that she was the Ward Councillor for Berkhamsted West and she had not visited the premises.

Councillor Taylor declared that he was the Ward Councillor for Gadebridge and had visited the premises but not for a long time.

Chairman

Councillor Sutton declared that he was the Ward Councillor for Leverstock Green and he had visited the premises once in the past.

LICENCE HEARINGS

The application was for the review of a premises licence:

The Old Bell
High Street
Hemel Hempstead
Hertfordshire

The Chairman asked the Members of the Sub-Committee to confirm that they had read the Agenda. Councillors Sutton and Taylor confirmed they had read the documents at hand.

The Chairman asked whether all legal obligations had been complied with. S Scrowther confirmed that they had.

Timescales for submissions were discussed and it was agreed that all parties would have 20 minutes to make a statement.

The Chairman then invited the Review applicants to make representations to the Sub-Committee.

Mr Rule made the following statement:

- His main objection was that the pub had become a nightclub on Thursdays, Fridays and Saturdays. They had been unaware of the extent of the noise until a tenant moved into 49c and was unable to sleep due to the loud amplified music and had to stay overnight in a hotel on some weekends. He asked if the pub needed planning permission for a change of use.
- There was a party wall between his property and the Old Bell, and it was inconceivable that any amount of soundproofing would remove the noise and inconvenience. The building vibrated.
- The tenant moved out after a few months, despite initially signing a year's tenancy agreement.
- He and Mr Loughran were disappointed that Environmental Health Officers had not visited to take measurements despite numerous requests. They had been aware in April of the objections.
- Environmental Health Officers did subsequently put forward proposals about insulation without having inspected the property at that time. They did however visit on Thursday 15 May when the noise was not as bad as on a Friday or Saturday night.
- It was his understanding that loud music was prohibited in blocks of flats from 11pm.
- In 2012 when the Old Bell applied for the extension to the Licence the Landlord was not aware of the application and therefore no objections were made at that time.
- The tenant moved in to the flat 1 February 2014 and by 30 March 2014 was complaining about the noise. The tenant had originally wanted a 2 year lease but was given a 1 year lease. He still had 10 months to go when the Landlord allowed him to vacate because of the noise issues.
- The limited objections could be attributed to the lack of publicity of the Review application, and also because if residents made a formal complaint it could have an adverse effect on their property value and prejudice the sale of their home.
- The written statement made by the solicitor acting on behalf of the brewery was inaccurate.

Chairman

Mr Rule explained that matters had moved forward in the last few weeks and asked if he could circulate papers to the Committee in response to the brewery solicitor's statement.

The Solicitor for the Council said that further submissions of papers that contained information relating to the solicitors statement would need to be agreed by both parties.

Mr Loughran accepted the ruling.

Mr Loughran therefore summed up the response referred to by Mr Rule as follows:

Mr Dockerill met with the tenant of 49c in May 2014. The tenant had moved into the property after having to move out of his previous property at very short notice. Mr Loughran then proceeded to read out the following statement from the ex-tenant:

"I took the tenancy initially, asking for a 2 year lease, but was given a rolling lease. I was not desperate for the flat, I had looked at many properties before 49c which met my needs and was in the perfect location and beautifully finished. I was devastated at having to leave the property but I have a 9 year old daughter who could not come to stay due to the incredibly loud music and general noise levels emanating from the Old Bell every Friday and Saturday night which resulted in me having to stay in hotels on my weekends with her.

The Landlord came into 49c and at no point did I say that there was no longer an issue with the noise levels. Whether the bathroom door was closed or not, the music levels were horrendous, everything in the flat shook, I could hear every word the DJ said and I could even partake in the pub quiz on a Thursday night whilst in bed.

I wish to vacate for one reason alone – sleep, and the ability to have my daughter at weekends without her being kept awake until the best part of 3.00am. As previously stated, I love the flat and felt that I had no other option.

Reasons for vacating:

1. Noise levels in excess of 90 Decibels frequently.
2. Drunks standing in doorway and urinating and vomiting against the door.
3. Taxis pulling up outside the Old Bell at 2.30am and sounding car horns.
4. Unable to sleep between 9.00pm and approximately 3.00am every Friday and Saturday night.

I hope this clarifies things. I am staggered at the claims that the pub landlord is making and I am happy to make any statements or stand up in any court of law to challenge his claims"

Mr Rule added that he had an email from the lettings agent saying that in respect of the recent advertising of 49c High Street, Hemel Hempstead they have found securing tenants to be problematic. and that the two most recent applicants attracted to the accommodation did not pursue their interest due to the music noise from the adjacent public house penetrating the flat, further compounded by the fact that the public house has a late night license at weekends there was a further email from one of the perspective tenants giving the reason for him not taking the tenancy due to the noise from the pub at weekends.

Mr Rule finished by saying that all the work carried out in the flats fully complied with building control regulations and had all the documentation to prove this.

Councillor Mrs Green asked when the top floor of the property was converted to flats. Mr Rule replied that planning permission was granted in 2011 and the flats were completed in February 2014.

Chairman

Councillor Sutton asked if a survey was carried out on the finished property to see if they were sound proof. Mr Rule replied that architectural consultants were employed who applied to building control and received provisional approval subject to improving the sound insulation. A sound report was then commissioned and the recommendations carried out. Building Control had made an inspection and had confirmed that they were due to issue the final approval.

Mr Warne asked 3 questions relating to the statements from Mr Rule and Loughran:

- What was the date of the correspondence from the prospective tenant, giving reasons for not moving in?
- Has the final building control completion certificate been issued?
- Is there now a tenant in 49c?

Mr Rule replied:

- The date of the correspondence from the prospective tenant was 19 May 2014
- The final inspection was carried out in February and was told that the certificate would take a while to come through. An email was sent on 6 June from Building Control to say that the certificate would be issued within a few days.
- The property had now been let to the Assistant Manager of the Old Bell and another employee who had said that they would not be inconvenienced by the noise from the Old Bell because they would be working there until 2am.

The Chairman asked Mr Warne to make his statement.

Mr Warne made the following statement:

Mr Warne started with a summary of the timeline as recorded in the agenda:

- The premises were finished and tenanted around 1 February 2014.
- The first complaint was received 4 March 2014.
- Two attempts were made to deal with the problems between Mr Dockerill and Mr Rule and Mr Loughran. Firstly Mr Dockerill offered to speak to the tenant directly. Secondly Mr Rule called into the Old Bell when passing and asked Mr Dockerill how things were going.
- Mr Warne highlighted the e-mails from Mr Rule. The e-mail dated 30 March 2014 to the tenant and his response, and an e-mail on 4 April 2014 to the licensing office at Dacorum Borough Council asking them to revoke the licence (all 3 emails detailed on pages 26 to 28 of the report).
- The first formal meeting was held on 11 April 2014. Mr Warne highlighted that on 10 April before the formal meeting, an e-mail was sent from Mr Rule requesting that the licence be revoked and confirming that the tenant was given consent to vacate the property.
- On 15 April Mr Rule notified the Spirit Pub Company that he would be continuing to make representations to the Licensing Authority.

Mr Warne went into more detail on the following issues:

- With regard to the meeting on 11 April. Spirit Pub Company took the matter very seriously and came to the meeting with a full team to try and resolve matters. Mr Rule's position at the meeting was that the music should stop at 12 midnight, which was different from the position taken in the e-mails requesting that the licence should be revoked.
- No solution was put forward despite an offer to look at the insulation and an offer by Mr Dockerill to visit the flat on the evenings that the disco was on to trial moving

Chairman

speakers, and also to explore other options, such as moving the taxi pick-up point from directly outside the Old Bell.

- Mr Dockerill visited the flat at around 22.30pm on the evening of the meeting but there was no answer from the tenant who subsequently sent an email to Mr Dockerill to say that he was “sound asleep”
- Mr Dockerill visited the tenant the following evening and agreed that there was some noise through the wall, but with the toilet door closed, the sound was minimal and at a level that could be cured.

Mr Warne referred to the current position and stated the following:

- The tenants’ position was somewhat different from the statement given by Mr Rule. The tenant had moved into a one-bedroomed flat for personal reasons. He had a 9 year old daughter who visited regularly as well as an 18 year old son. The flat was not appropriate. And Mr Warne suggested that this was the reason that the tenant wanted to end his one year tenancy agreement.
- The property had been re-let to tenants who worked in the Old Bell and this was useful because it meant that there was now access to the premises to address the issues in order to ensure that there would be no noise nuisance in the future.
- Mr and Mrs Trott had made a representation in respect of the variation application that was submitted for the premises in 2012. Their property was a lot further down the High Street from the Old Bell with 3 other licensed properties in-between. 2 other pubs also had late opening times. There were no representations from the police relating to crime and disorder.

The Chairman asked Mr Trott to make his statement.

Mr Trott made the following statement:

There was an awareness issue for people living in the High Street about this meeting. He had only learnt about it from a notice attached to a lamp post.

He had no issue with the Old Bell and, as an ex publican, he can empathise with the situation.

The issue he had was nothing to do with the sound situation.

The licensee had difficulty in taking control or responsibility for the people who drink at their pub because the incidents took place after the patrons had left the premises.

When premises stay open until 2.30am, the people leaving the premises cause disturbance.

The Licensing Act 2003 objectives are :

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection for children from harm

Mr Trott asked for guidance on the prevention aspects. He said he was frequently woken by people leaving the pub and believed that these people were from the Old Bell. There were 2 main issues:

- The lateness of the opening hours
- People leaving the Old Bell drunk and witnessing antisocial behaviour from them.

Chairman

Mr Trott said that it was very difficult when you were woken up at 3am to ring 101 and he was until recently unaware that he could ring 101 the next morning, after the event to log the complaints.

- He queried sound proofing a grade 2 listed building because any work carried out had to be approved.
- He concluded by saying that he was going to encourage other people to join him in making representations, asking if it was right or fair to allow licensed premises to stay open until 2.30am Fridays and Saturdays which allowed customers to cause these disturbances when leaving. He said it wasn't the licensees fault but they had a responsibility to the public and the local residents, and the time factor for this was within the control of the Licensing Sub-Committee.

The Chairman pointed out that when a licence was issued for very late hours, the Licensing Act limited the powers of the Licensing Authority to subsequently reduce the hours. Actual evidence was needed to be able to go against the applicants' request. If no evidence was submitted it was not possible to reduce the hours. That was why complaints should be registered with the police or Environmental Health so that the licensing authority was aware of what was happening.

The Chairman asked Mr Cawthorne to make his statement.

Tony Cawthorne made the following statement:

"I became aware of the issue involving alleged noise nuisance from the Old Bell in April 2014. As a result of an alleged complaint, the council procedure was followed and diary sheets were sent to the property affected. These were not returned. I then received the licence review from the licensing department with supporting documentation indicating noise levels of 70 -90 decibels recorded inside the flat up to 2am. I then undertook a site visit to the Old Bell and discussed the alleged noise nuisance and proposed license review on 15 May 2014 with Mr Dockerill. During the discussions with Mr Dockerill I was shown a type 2 sound level meter and a noise diary which had been completed diligently. The readings had been taken every 30 minutes from 7.00pm to 2.00pm. I asked who had made the recordings and where they had been taken from. I was advised that the readings were taken by a member of staff from the middle of the function room and the other 2 rooms above the heads of the audience. I was also advised that noise readings were taken in the street, down the side of the alley and the rear garden.

The levels that were recorded were consistently between 80 and 90 decibels. The levels given caused me concern and on my return to the Council I advised the health and safety team as the levels recorded were in excess of the Noise at Work Regulations for a maximum level of 87 decibels. I was also advised that the noise levels in the rear beer garden were mainly from the patrons. The World Health Organisation (WHO) recognises levels of 55 decibels up to 11pm and after that time 35 decibels outside bedrooms. The levels from the log were around 60 decibels.

The licensing conditions I have requested are as a result of the evidence provided by the Old Bell and I am aware that this issue is being investigated by the Spirit Pub Company and measures are being taken.

I was also advised by Mr Cockerill that negotiations had previously been undertaken between the Licensee and the applicant as to a resolution of the sound insulation that was allegedly offered to be put into the flat accommodation which was refused. I am not aware if the flats when converted to residential from commercial use were built to comply with approved regulations (Document E). This standard requires 43 decibel protection for refurbishment and 45 decibel protection for new build".

Chairman

The Chairman asked Mr Cawthorne if the three conditions listed on page 36 remained the same. Mr Cawthorne replied that in his opinion the conditions would resolve the issues between the Old Bell and the flat. He said the first condition would be to identify what the transmission was between the two properties, but this would require both parties to cooperate in order to facilitate this investigation. It was, as stated a grade 2 listed building, but it would not mean the removal of a wall, rather an addition to the wall, requiring building consent.

In response to a further question from the Chairman about the beer garden, Mr Cawthorne answered that the noise levels were in excess of the WHO guidelines. As the beer garden was open until 12.30am and the window of the flat was within feet of the beer garden, it was not possible to comply with the regulations. Regarding the closing of doors and windows, Mr Cawthorne said that they were under the control of the Licensee and these should remain closed to control noise breakout.

Mr Loughran responded to an earlier comment from Mr Warne. He said that the tenant had moved out of 49c into an equally unsuitable one bed roomed flat elsewhere.

The Chairman asked if everybody who had indicated they wanted to speak had spoken. This was confirmed.

The Chairman asked both parties to sum up their statements.

Mr Trott did not wish to add anything to his previous statement.

Mr Warne said the following:

- At most, this was a claim of nuisance that needed to be resolved amongst the parties involved with time given to rectify the issues.
- There is no statement from the tenant of 49a who has been there for over 3 years.
- Paragraph 1.16 of the new licensing guidance stated that the Licensee could not seek to manage the behaviour of customers once they had left the area that was within the direct management of the licence holder and their staff.
- There was a process going on at the moment to check the noise levels by using quite sophisticated equipment to make sure that they complied with the noise at work regulations.
- Regarding the financial considerations, there was a potential financial burden if the conditions were imposed on the activities of the premises license. This should be taken into account when making the decision.
- 49c was to be rented by staff from the Old Bell at a cost of £625 per month but there was a potential revenue loss to the Old Bell if the music restrictions were imposed of between £2½ - 3K, equating to 30% of revenue
- The son of the landlord who lived in 49a had never made a complaint about the noise.
- The complaints from 49c covered a very short period of time between February and April 2014, with this hearing in the second week of June. This was considered to be too short a period of time given the proactive assistance offered to prevent the Review.
- The Human Rights Act applied to the premises as well as the occupant of the flat.
- Spirit Pub Company and the Designated Premises Supervisor at the Old Bell were willing to work with the landlord and disagreed wholeheartedly that there were no measures that could be put in place to resolve the problems in a sensible manner.
- The evidence submitted did not provide sufficient reasons for the Sub-Committee to 'fetter' the licence.
- With regard to the conditions suggested by the Environmental Health Officer:

Chairman

- The condition to stop and regulate entertainment at the premises until there was agreement with the landlord - contact with the landlord had not been easy.
- The condition to close the beer garden at 11:00pm – there was a neighbour who lived even closer than 49c with their front door virtually stepping into the beer garden and they had made no representations.
- Closing doors and windows was acceptable when entertainment was taking place.

Mr Warne asked the Sub-Committee to make a proportionate decision following consideration of all submissions. He felt that it was a “cart before the horse” situation and the matters should be sorted out between the parties.

The Chairman pointed out that when a request came in for a review, it was subject to regulations with a time limit that had to be complied with.

Mr Rule summing up said the following:

- He took his own sound readings at the property on 20 May. There had been no improvement in the situation and the property was currently unlettable on the market as specified by the letting agent. With 50-100 revellers, plus amplified music it was impossible to smother the noise by insulation.
- The refurbishment of the flat had only recently been completed to a high standard and it would not be acceptable to start doing anything else to the walls. Anything that needed to be done would have to be to the premises of the Old Bell. The property had not been re-let as of yet although the terms of a reduced rent to the staff members had been agreed.
- Environmental Health were contacted on 3 April 2014 about the noise from the Old Bell, they liaised with the tenant but lost interest in the matter when the tenant moved out, saying they did not look at empty properties. It was empty as a direct result of the noise. Mr Rule said he was now in a situation of stalemate and this had cost him thousands of pounds.
- The property 49a seems to have been ignored. The readings taken by him had registered 40-45 decibels over a 45 minute period. He said that the other property referred to by Mr Warne was detached and as such, did not suffer with transient noise through the wall in the same way as the flats.

Mr Loughran added that his use of the property was in accordance with planning and building regulations, it followed all Government regulations to bring properties into residential use. He had done everything he was expected to do to make it a comfortable residential property in accordance with all the regulations. He said that the pub had changed their trading policy to create a different use. They were prevented by the Conservation Officer from doing a great deal of work, including the removal of chimney breasts and there was no reason to suspect that any proposal at that time to increase insulation would have been met with approval. Therefore with a change of use and without making the necessary provisions the licensees were suggesting that we delayed our plans until we upgraded our own properties. Mr Loughran requested that the right course of action would be to review the license and for the Licence holder to carry out the necessary work before reapplying.

The Chairman asked the Licence holder if bottles and glasses were taken outside. Mr Dockerill replied not after 12.30am.

Chairman

The Chairman then asked the Sub-Committee members if they had any questions for the Licence Holder or the applicants.

Councillor Taylor said that Mr Trott was quite right in the four principles that needed to be considered in laying out the terms and conditions of the License. Prevention of public nuisance was the principal being tested with this review. He said that he agreed that Mr Trott could not categorically say that the anti-social behaviour was exclusively from the Old Bell, but it could not be denied that there was a noise element to be considered. The conversion of the property to flats was a change of use for all kinds of reasons and although not every document was in place it was understood that it would soon be. Councillor Taylor asked if the property at 49c was considered unlettable.

Mr Rule said that the letting Agents had said that 49c was unlettable. Two people showed an interest but pulled out when they heard the noise from the Old Bell late at night.

Councillor Taylor addressed Mr Warne. He said that he intimated that every effort would be made to come to a resolution between the parties and show corporate social responsibility and asked if this were so.

Mr Warne agreed that this was the case and always had been in meeting together to try and get to a resolution.

Councillor Sutton said he was aware that there were a number of licensed premises in the Old High Street and asked Mr Dockerill if the noise levels had changed significantly over the last few years. Mr Dockerill replied that he had been at the Old Bell for seven years and for six years there had been a DJ on every Friday and Saturday night and there had been no change in the noise levels.

Mr Warne added that as part of their research they had carried out a small survey and there were some issues with passers-by on Fridays and Saturday evenings. A recent episode was monitored on CCTV but it was not customers from the Old Bell.

Mr Cawthorne asked if he could clarify that the sound levels recorded were accurate, taken over a short period of time and the average levels detected were 80-90 decibels; in excess of the noise at work levels. He considered them excessive, and said that at that level there would be some transmission between one property and another.

Councillor Sutton referred to the comment from Mr Trott about noise from Taxis and suggested that the Licensing Officer might speak to the Taxi companies and remind them that they are not supposed to sound horns.

The Chairman thanked all parties and explained that the Committee would make their decision in private and issue the decision in writing.

The Sub-Committee deliberated in private and

Agreed:

The Licensing of Alcohol and Gambling Sub-Committee, having had regard to National Guidance and Dacorum Borough Council's own Licensing Policy and the Licensing Objectives of the Licensing Act 2003, and having taken into account all oral and written representations, agreed to grant the premises licence as set out below.

Chairman

The Sub-Committee resolved to modify the conditions of the licence, by adding the following condition to Annex 3:-

“No open bottles, beverages or glasses to be taken into the beer garden after 11.30pm”

This change is considered by the Committee to be appropriate for the promotion of the public nuisance licensing objective.

By para 11.20 of the June 2013 Guidance to Licensing Authorities (this being the applicable Guidance to the date of issue of this review), “In deciding which of these [review] 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 and should always be no more than an appropriate and proportional response.”

The Sub-Committee considered the representations made by the owners, and adjudged that there were two primary causes attributed to public nuisance – music emanating from the premises, and noise from the beer garden. The Sub-Committee noted the ongoing investigation into the music issue, and determined that the licence-holder had made all reasonable efforts practicable to engage with the applicants to alleviate any nuisance. The Sub-Committee noted the applicant’s refusal to accept sound proofing works to the interior of the adjoining property.

Committee had regard for, amongst others, para 11.10 of the 2013 Guidance and in particular to the statement, “Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.”

In respect of the noise arising from the use of the beer garden, the Committee having regard for para 2.22 of the 2013 Guidance noted that the use of external areas for smoking, etc, could not be prevented but that the times such areas were used, and the potential for nuisance to be caused, could be reduced by limiting the period of time for the removal of drinks from the premises to such areas, and that it was considered appropriate to take action to this effect to promote the public nuisance licensing objective.

The meeting finished at 3.15 pm

Chairman