

## **LICENSING SUB-COMMITTEE**

Wednesday 4 February 2009

### Present:

Councillors Branston, Newby and Shiel□

### Also Present:

Principal Licensing Officer, Licensing Solicitor and Member Services Officer (HB)

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### **APPOINTMENT OF CHAIR**

Councillor Newby was appointed Chair for this meeting.

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### **DECLARATION OF INTERESTS**

No declarations of interest were made by Members.

### **LICENSING ACT 2003**

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### **APPLICATION FOR A REVIEW OF A PREMISES LICENCE - VIVO (FORMERLY THE VELVET LOUNGE), SIDWELL STREET, EXETER**

In attendance:

#### Applicant for a Review

Ms Lisa Cocks: Representing Exeter City Council

#### Also present

Mr J Tsouris : Flat 4, 126a Fore Street, Exeter

Mr C Nathan : 126a, Fore Street, Exeter

Ms K Tree : Landlady and Interested Party

#### Representing VIVO

Mr D Forbes : Designated Premises Supervisor, Vivo (on behalf of Premises licence holder Charles Gordon Ltd.)

Mr O Clark : Business Partner, Vivo

Mr N Carpenter : Future Technical Solutions (Acoustic Consultant)

The Chair introduced the Sub Committee Members and Officers.

Lisa Cocks advised that since January 2008, complaints relating to loud music from the Velvet Lounge had arisen from 6 different properties within the area. Additionally, a complaint had been received from a landlord of properties affected by the noise. Following complaints to Environmental Health, an investigation had been carried out into the allegation of late night music noise from the Velvet Lounge. She was of the opinion that a statutory noise nuisance had existed and was likely to recur.

A call had been received via the Community Patrollers on 21 November 2008 and a visit had been made by them to a nearby resident where loud music had been verified from within the premises. A request to reduce the noise from within the

building had been complied with. Calls alleging noise disturbance had also been received on 29 November 2008 at approximately 01.32 and 03.00, but had not been attended as staff were off duty.

On 19 December 2008, officers from the Environmental Protection Section had met with the new Designated Premises Supervisor of the premises, Duncan Forbes, to discuss the issues relating to noise. A general discussion regarding the use of the first floor of the building as a venue for amplified music had taken place. There were concerns regarding the structure of the building, in particular a flat roof to the rear of the DJ area on the first floor, where there was potential for the break out of noise. Following this meeting, draft conditions had been agreed and the DPS gave contact numbers which could be reached in the event of a complaint. The draft conditions were:

1. A person shall be designated in writing by the DPS to deal with any issues regarding nuisance or disturbance. This designated person shall be available for contact, via a specified telephone or mobile phone number, at any time whilst any licensable activity is provided. The designated person shall investigate every complaint made. A written or electronic record shall be kept of the time, details of the complaint and outcome of the complaint. This record will be kept in a legible form for a period of not less than 12 (twelve) months and made available on request of an authorised officer.
2. There shall be no public address system, tannoy or other amplified sound system used, unless routed through a suitable noise limiter. Full details including set levels and operating instructions of the noise limiting device installed in the premises shall be approved in writing by the Head of Environmental Health Services.

Condition 2 was a means of addressing the noise problems quickly but other measures would also be necessary.

The following condition had been put to the new DPS but not agreed at the time:

The Premises Licence Holder should make arrangements for a survey of the building to assess its acoustic integrity. If there are any acoustic weak points in the building, details of how the structure will be improved to be submitted to and agreed in writing by the Head of Environmental Health Services.

Since the meeting, an acoustic and noise pollution report had been carried out. The report identified structural conditions as key to the reported problems.

On 23 January 2009 two further complaints had been received relating to noise from Vivo. The Community Patrol Officers had visited the complainants and witnessed loud bass music which they had categorised as serious.

In response to the Chair, Mr Forbes stated that he had no questions for the applicant.

Mr Tsouris stated that although noise could be expected from time to time if resident within the City Centre, for example, passing buses, the level experienced on Friday and Saturday nights from Vivo had been excessive, the noise often continuing to 2am. He was only some 12-15 feet from Vivo and other residents had also complained, some having signed his letter of complaint. A number of residents had moved as a result of the noise levels experienced. It was reported that the windows of neighbouring properties shook when the music was played at a loud level.

Ms Tree spoke in support of Mr Tsouris' comments. She was the landlady of properties adjacent to the pub. The residents of the flats included young families - one with a three year old child and another expecting a child very shortly - who were finding it difficult to cope with the noise generated on weekends. As landlady she had received a number of complaints and felt the rapid turnover of residents may be as a result of the noise.

Mr Forbes stated that he had no questions.

Mr Forbes advised that he and his partner had taken the business on in December 2008 with the documentation completed on 3 December. They therefore had no control over those incidents reported between January 2008 and December 2008. The disturbances during that period had occurred when the premises had been owned by another company. They were anxious not to upset their neighbours but wanted to continue trading into the morning on certain days in order to ensure that the business was viable. They were unaware of the level of complaints in respect of these premises before taking the business on but reiterated that they could not be held responsible for the complaints received before December. The noise abatement notice had been served on the previous company on 9 December as the papers had not at that time been transferred to the new owners. Transfer of paperwork had occurred in the week beginning 19 December. He had met Lisa Cocks in that week and they had toured the premises together. He had not agreed initially to the condition requiring the making of arrangements for an acoustic survey of the premises because of the likely cost. He stated that the last thing they wanted to do was to upset local residents. The complaint received on 23 January had been after they had provided a designated contact but they had not received a complaint on the night itself. If they had, they would have responded.

He concluded by stating that the new management could not be responsible for alleged noise nuisance received under previous management and that they had not been aware of the complaint received on 23 January. An acoustic report had now been produced. Neil Carpenter, the author of the report, stated that the building was a disaster in terms of noise break out as was the current sound system. The noise nuisance issue could be addressed in stages but it was important to install a limiter in the first instance to be set at an appropriate level. If noise was still a problem the equipment could be set to a lower level. Currently the bass levels were between 63-80Hz which could be heard through the flat roof and the eaves above the disco. Noise also escaped through the fan vents. The noise limiter could be locked with a password, attenuation levels to be agreed with the environmental health officers and residents.

In response to Councillor Newby, Mr Tsouris confirmed that the bass sound was a particular problem. The nature of the music itself had, in the past, been problematic. Mr Forbes advised that the genre of music played had been changed. This type of music was not popular with the client base Vivo was now trying to attract.

The residents did not have any questions to put to Mr Forbes.

In response to Councillor Branston, who asked how quickly the recommended works could be done and at what cost, Mr Carpenter advised that the limiter could be installed quite quickly. Mr Forbes later said that it was unlikely that this would be achieved by the coming weekend but should be installed by the weekend of 13/14 February 2009. Work was however required in the area of the roof tiles and eaves and could be undertaken quickly. Some other works including alteration to the venting fans was more complex.

With regard to cost, Mr Forbes advised that after discussions with Mr Carpenter it was estimated that most of the works could be done at a cost that was not prohibitive. He gave a commitment to the Sub Committee to undertake necessary works as soon as possible although not all the works would be done at once. Mr Carpenter estimated that the work would take between four and six weeks.

In response to Councillor Newby, Mr Carpenter advised that the speakers, which comprised of two parts, would be replaced by speakers that could be "flown" from the ceiling with additional sound absorption materials. He advised that most modern sound systems would reduce the noise and that the first measure to address the problem would be to turn the sound down.

Lisa Cocks advised that the current sound level exceeded the acceptable noise nuisance levels. She confirmed that further discussions would take place with Mr Forbes and Mr Carpenter.

The Chair asked the interested parties for their comments on the proposals. Mr Tsouris stated that he felt that the proposed measures would help. He stated that the bass was the main problem and that it would be important to monitor the situation to see if the proposed measures were working.

The Sub Committee retired to make its decision in the presence of the Licensing Solicitor and the Member Services Officer.

The Licensing Sub Committee found that noise nuisance had been established at the premises and that the Licensing Objective relating to the prevention of Public nuisance was not being adequately promoted.

**RESOLVED** that it was necessary to add conditions to the Premises licence to address the issues raised as follows:-

- (1) a person shall be designated in writing by the DPS to deal with any issues regarding nuisance or disturbance. This designated person shall be available for contact, via a specified telephone or mobile phone number, at any time whilst any licensable activity is provided. The designated person shall investigate every complaint made. A written or electronic record shall be kept of the time, details of the complaint, the details of the designated person investigating the complaint and outcome of the complaint. This record will be kept in a legible form for a period of not less than 12 (twelve) months and made available on request of an authorised officer;
- (2) there shall be no public address system, tannoy or other amplified sound system used, unless routed through a suitable noise limiter. Full details including set levels and operating instructions, of the noise limiting device installed in the premises shall be approved in writing by the Head of Environmental Health Services; and
- (3) the Premises Licence Holder should undertake a survey of the building to assess its acoustic integrity. If there are any acoustic weak points in the building, details of how the structure will be improved to be submitted to, and agreed in writing by, the Head of Environmental Health Services.

(Report circulated)

(Meeting commenced at 10.05 am and closed at 11.05 am)

Chair

## **LICENSING SUB COMMITTEE**

### **Present**

Councillors Branston, Newby and Shiel

### **Also present**

Principal Licensing Officer, Licensing Solicitor and Member Services Officer (HB)

4

### **APPOINTMENT OF CHAIR**

Councillor Newby was appointed Chair for this meeting.

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### **DECLARATION OF INTERESTS**

No declarations of interest were made by Members.

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### **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 EXCLUSION OF PRESS AND PUBLIC**

**RESOLVED** that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the consideration of the following item on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 1 of Part I, Schedule 12A of the Act.

### **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

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### **APPLICATION FOR ISSUE OF A STREET TRADING LICENCE**

The Principal Licensing Officer presented an application to renew a consent to street trade for a period of twelve months in Castle Street (adjacent to High Street), Exeter, which was a designated consent street under the provisions of the Local Government Act 1982.

Mr P had held previous consents to trade in Castle Street since 2006 and he had applied for consent to trade for a further twelve months. The proposed method of trading had not drawn any adverse comments from the Environmental Health Department that dealt with food safety issues.

Mr D was seeking to trade from Sunday to Saturday between the hours of 19.00pm until 03.30am. He proposed to use a van as he had in previous years for the sale of hot food take-aways.

Mr P did not attend.

**RESOLVED** that the consent be granted for a period of 12 months, subject to the addition of a recommendation that the operator move towards the use of bio-degradable products wherever practical.

(Report circulated to Members)

(The meeting commenced at 11.10 am and closed at 11.12 am)

Chair

