

## **LICENSING SUB-COMMITTEE**

Wednesday 2 June 2010

### **Present:**

Councillors Newby, R Smith and Sterry

### **Also Present:**

Senior Licensing Officer (IL), Licensing Solicitor and Member Services Officer (HB)

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### **APPOINTMENT OF CHAIR**

Councillor Newby was appointed Chair for the meeting.

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### **DECLARATION OF INTERESTS**

No declarations of interest were made by Members.

## **LICENSING ACT 2003**

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### **REVIEW OF A PREMISES LICENCE - THE SHOWMAN, COWICK STREET, EXETER**

APPLICATION UNDER SECTION 51, LICENSING ACT 2003 TO REVIEW THE PREMISES LICENCE OF THE SHOWMAN, 54 COWICK STREET, EXETER EX4 1AP.

Decision of the Licensing Sub-Committee sitting at The Civic Centre on Wednesday 2 June 2010 at 0930hrs

Mr and Mrs Tsouris : Applicants for a Review

Representing the Showman:

Mr Jim Pope : Regional Manager, Enterprise Inns

Mr David Layfield : Manager, The Showman

Mr Richard Taylor : Solicitor for Enterprise Inns

Representing the Licensing Authority

Ms Lisa Cocks : Senior Environmental Health Officer

Mr Steve Cockram : Environmental Health Technician

The Chair introduced the Sub-Committee Members and Officers.

### **Application for Review**

A representation for a review of the premises licence had been received from a Responsible Authority Environmental Health Services at Exeter City Council and an Interested Party, Mr and Mrs D J Tsouris, 53 Cowick Street (next door to the premises), for the reason that the Licensing Objectives relating to Prevention of Public Nuisance, the Prevention of Crime and Disorder and Protection of Children from Harm were not being adequately promoted..

In attendance for the Applicants were Lisa Cocks, Senior Environmental Health Officer and Wayne Cockram, Environmental Health Officer and Mr and Mrs Tsouris. Following the application for a review Environmental Health Services entered into discussions with premises licence holder and agreed conditions to be attached to the licence to promote the Prevention of Public Nuisance.

The Interested Party, Mr and Mrs Tsouris read a prepared statement of their evidence to the hearing, a copy of which is appended to this notice. Mrs Tsouris added that she wished to add the Protection of Children from Harm to the objectives not being promoted as she was expecting a baby in a few weeks time.

The Responsible Authority, Environmental Health Services, had circulated a report setting out their evidence, a copy of which is attached.

At the hearing, Lisa Cocks referred to conditions agreed with the Respondent. The two means of reducing noise were a) works to the building such as cladding and b) attaching a noise limiter to the source of the noise. Lisa Cocks advised that the position of the speakers should be investigated as their location -could impact on the noise attenuation. It was suggested that the proposed second condition be amended to require the playing of music from the juke box to be through a noise limiter. The recommendation was that there should be no live or recorded music at the premises until the noise limiter was installed and an acoustic survey carried out.

One of the conditions proposed that customers should be prevented from using the rear smoking area after 2300hrs seven days a week. To further reduce congregation in this area Lisa Cocks suggested that the seating could be removed after 2300hrs as it was a management responsibility to ensure that customers did not congregate. The Interested Party stated that it would wish the seats to be permanently removed. It was noted that the seats were attached to the boundary walls.

### **Relevant Representations**

The Respondent Premises Licence Holder, Enterprise Inns, was represented by Richard Taylor, Solicitor, Gosschalks. Also in attendance were Mr Jim Pope, Regional Manager, Enterprise Inns and Mr David Layfield, Manager of The Showman.

Mr Taylor stated that there had been a public house on the site for at least 200 years and that the layout had been similar throughout that time with toilets and a beer garden at the back. The premises had both a justices' licence and a public entertainment licence under the previous licensing regime. There had never been any problems with the operation of the pub. The present allegations were taken very seriously.

Enterprise Inns owns 7,500 pubs in England and Wales and all were leased to tenants. Mr Layfield had taken over the Showman at the beginning of April 2010 on Good Friday. Mr Layfield has been in the pub trade for eight years and is currently manager of four public houses in the area including the Stowey Arms at Exminster and a pub in Teignmouth. All of the other premises have live music also. Up to the point that Mr Layfield took over there had been no difficulties with the Showman but as soon as he took over the tenancy the review proceedings landed.

There were two major issues - noise emanating from within the premises and noise from people. Mr Taylor invited the Licensing Sub-Committee to impose the conditions agreed.

Mr Taylor stated that the Interested Party had purchased their home from someone who had stated that there was no nuisance from the premises and that to close the beer garden would mean that the business would cease to be viable. Noise and disturbance would always be caused by the public walking past in Cowick Street.

With regard to seating in the garden, Mr Layfield stated that he was prepared to remove the seats but that they would have to be dismantled as they were fixed to the wall. Glasses were not permitted outside the front of the premises and there were signs to this effect. Staff were constantly vigilant to ensure that glasses were collected from tables etc. A glass had been found on a windowsill at the front of the pub but this could have been from any number of pubs in the Cowick Street area.

The toilets were not attached to the premises so customers had to enter the rear courtyard to access them. Similarly, the Carousel Function Room was separate from the toilets. Karaoke had been reduced from three to four times a week to once a week.

The Interested Party stated that the proposed conditions would not sufficiently address the problems associated with the back courtyard. Problems were exacerbated by the courtyard being accessible through the rear gate. Smoking in the front of the pub on the pavement did not cause them problems. It was at the back of the premises where the noise could not be more easily controlled

The Licensing Solicitor advised that smoking and going to the toilet were not licensable activities although there was an inevitable cross over with the licensable activities. The Licensing Sub-Committee had powers to control the licensable activities through conditions so that the licensing objectives were better promoted but needed to bear in mind the limit of these powers if conditions were to be enforceable.

Mr Taylor suggested that the rear gate could be designated a fire exit only so as not to be used as a thoroughfare. The Carousel Function Room had to be accessed via the courtyard also and it did not have separate toilets.

The Interested Party was invited to make any final comments and the Respondent then summed up saying the premises had remained largely unchanged for 100 years. It was necessary to weigh the application on the evidence heard and although it was accepted that the application had been properly made, the premises was in a heavily populated area and if it was as bad as the Interested Party said more support for the application would have been expected. Enterprise Inns were taking the complaints very seriously and were anxious to ensure that the pub was of benefit to the local community.

The Licensing Solicitor advised that the Licensing Sub-Committee should disregard evidence pre-dating the present tenancy as it would be disproportionate to impose conditions as a result of failures of previous management.

## **DECISION**

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

In determining this application the Licensing Sub-Committee considered all the relevant evidence and information presented to it, both written and oral, and took account of all the matters it is bound to take into account, in particular the following:

- Licensing Act 2003 (section 51 - 52)
- Statutory Guidance (March 2010)
- ECC Statement of Licensing Policy (January 2010 – Section 17 and generally)
- Human Rights Act 1998

The Licensing Sub-Committee ignored any representations made to it which were not relevant to any of the licensing objectives.

The Licensing Sub-Committee had to consider whether, in the light of the evidence presented on review, it was necessary and proportionate to impose or remove any conditions on the licence or restrictions on the licensable activities and licensing hours permitted under the existing premises licence.

The Licensing Sub-Committee found, on the evidence, that the licensing objective of prevention of public nuisance had not, since 2 April 2010, been adequately promoted by all of the licensable activities at the premises. In particular, there has been public nuisance from karaoke and live music and from use of the rear gate in to the courtyard which allows persons to congregate in the rear courtyard and it was necessary for the promotion of the licensing objectives to modify the conditions on the licence by the addition/removal of the following:

- (1) no live or recorded music (other than music from the juke box and background music) be permitted until a survey of the building has been carried out 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. This must include an evaluation of ventilation ducts, windows and lobby area(s) around doors to be used for external access and egress and positioning of speakers and juke box. The agreed works should be implemented and a programme agreed in writing to the satisfaction of the Head of Environmental Health Services;
- (2) the recorded music from the jukebox will be played through a noise limiter which will be set at a level which does not cause a public nuisance. This will be done in conjunction with Environmental Health Services;
- (3) a cigarette litter bin shall be provided to the front of the building;
- (4) all windows shall be kept shut whilst regulated entertainment is provided;
- (5) all external doors (including fire doors) shall be effectively maintained and self closing. Unless in an emergency, all doors that are located in rooms where any amplified music and/or voice production is operating shall not be propped open or held open by any other means;
- (6) customers (including smokers) will be prevented from using the rear smoking area after 2300hrs seven days a week;
- (7) the provision of live or recorded music shall cease at 2300hrs seven days a week;

- (8) the rear gate to courtyard to be used as a fire exit only (it is recommended that it has a push bar and seal)
- (9) the following condition shall be removed:  
  
The serving of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment.

(The meeting commenced at 9.30 am and closed at 11.30 am)

Chair

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We have requested a licensing review on the grounds of the prevention of public nuisance and the prevention of crime and disorder – but we also wish to have the licensing objective of the protection of children from harm to be considered too as we are having a baby in 2 weeks.

We bought the property 53 Cowick Street and moved in on the 23<sup>rd</sup> December 2009, the property was advertised as a home suitable for families with an enclosed garden, as we were expecting a baby the following June we thought it would be an ideal family home – we were aware that there had been a problem with noise from the Showman as it had been disclosed on the HIP report. We questioned the previous owner about this and she said that it had been sorted out with the Environmental Health Department and that there was Karaoke on a Saturday night. She said the pub landlords were really friendly and that if you asked them to turn the music down they did. This lady seemed genuine; she had lived in the property for a decade and has also retained part of the plot – The Old Workshop on Church Road – where she will be building a house this summer. Her relaxed view of the pub made us presume that this was a quiet pub and that all potential noise issues were under control.

When we moved in it was a completely different story and we immediately wondered whether we had made a mistake. It was so bad that we considered moving into rented accommodation as there was no escape from the relentless noise, disturbance and intrusion.

### Living next to the Showman our experiences

When we moved in on the 23<sup>rd</sup> December there was loud live music coming from the pub sometimes until 1am 4 – 5 times every week. Karaoke nights on a Monday, Thursday and Saturday and a live band every Sunday afternoon, there were also private Karaoke parties on Sunday evenings in the main pub and functions going on in the Carousel suite (a separate function room) at regular intervals. There was also people noise coming through the walls and coming from outside the pub at the front and back of the property. This noise was worse when there were live music events but the people noise was annoying from opening around 12pm until 1 – 2am when people finally left the area. There was and is still a noise nuisance coming from an extractor fan that is directly under our bedroom window that goes off every 15 minutes or so 24 hours a day.

I would frequently smell urine on our doorstep and inside door mat and suspected that people were urinating at our door. On 17<sup>th</sup> January on a Sunday afternoon when a live band was playing in the Showman Dan opened the door to see an intoxicated man urinating directly on our front door – when this man finally stopped he went straight back into the pub. Dan talked to the landlord who washed off the door and doorstep with a bucket of water – we reported the incident to the police.

Initially we talked to the landlord – this was fruitless so we started compiling reports for the Environmental Health dept which resulted in a Matron sound recording device being installed – the pub was aware of this and the music and people volumes went right down while the equipment was in so we feel a real picture of what was happening was not achieved. After this we called out the Community Patrols a few times – but the pub saw the Community Patrol vans and turned the volume down so we didn't get accurate pictures

of what was really going on. We then were informed that the owners of the pub had given notice, there had apparently been several issues which led them to this decision – but we were informed by Environmental Health that one of the issues was the cost of recommended acoustic assessment and potential works to resolve the noise problems.

We were informed that these landlords would leave on the 25<sup>th</sup> March. The problems escalated in the lead up to this date and at one call out the Community Patrol rung from the patrol vehicle, they said there was a large crowd of people outside our property and should they draw attention to us by coming in – then as the CP was on the phone to us the landlady from the pub went over to the van and started saying that they were leaving the following week - to justify the continuing noise. The pub was threatened with a noise abatement notice after this weekend but they left the following Wednesday – the problem had been ongoing for 3 months by the time they left and was unresolved.

We were informed that a new landlord was coming in and that the keys would be handed over on the 26<sup>th</sup> March. Dan rang the new landlord prior to this date and asked what he intended to do with the pub – when we found out there would be karaoke – we decided to apply for a licensing review. Dan also informed the landlord that there were ongoing noise issues and that the council were involved.

The change of landlord started a new, equally bad if not worse chapter of disturbance – slightly different from before, less live music – loud karaoke once a week but increased people noise, offensive language, shouting and juke box.

The noise started on Friday 2<sup>nd</sup> April with juke box music being played loud until after midnight. Dan went to speak to the landlord who said he would bear it in mind. Nothing changed. The next night there was loud Karaoke – the Community Patrol attended and took a recording at 12.30pm. A letter was sent to the landlord by Environmental Health. This was ignored resulting in another call out to the Community Patrol the following Saturday and following that a matron device was installed. Over the May bank holiday noise levels were recorded that were regarded to be a statutory noise nuisance. Since the matron was removed the music noise levels have fluctuated.

Any negligible reduction in music noise hasn't changed the noise from the people. This comes from within the pub and out the front and especially the back of the pub – people shouting, swearing, shrieking, singing, arguing etc. The outside area has recently had a bench and bar stools installed and the back gate is left open – effectively there are now two entrances to the pub so more people outside.

Doors and windows have been left open or you hear them being opened and shut and there have been 2 extremely offensive incidents outside the back of the pub in the middle of the day two Saturdays in a row, firstly someone shouted at the top of their voice 'You fucking gay cunt' and secondly 'I'm going to stab you up you cunt' repeated about 5 times in a row.

On a recent Saturday night there was a man stood on our front doorstep having an argument with another person using threatening language 'you don't want to get on the wrong side of me.....' The police were rung on the last two occasions. The police told us



that during licensing hours this is a management and licensing issue – trespass is under their jurisdiction but it is near impossible to catch people doing this.

Instead of enjoying our new house and my pregnancy we have been preoccupied with and intruded upon by the pub on a daily basis – it feels like we actually live in the pub because we are so affected by everything that goes on there.

In the 5 months that we have lived in the property we have been subjected to loud music and loud people, we hear offensive language daily, we have been kept up or been woken up every weekend and a lot of weeknights too, we are disturbed by the level of noise at back of the property from the pubs back yard, and at the front of the property; we have had people trespass on our property nearly every day; urinating on our front door, talking and arguing on our doorstep, banging into our door when stood on the doorstep, smoking - smoke comes under our front door and cigarette butts and glasses are left outside and on our property.

Because there is no control at the front of our property we are constantly worried about leaving or returning home in case we find unsavoury people on and around our doorstep. On several occasions Dan and I have asked people to get off our doorstep but no one has ever apologised and some people refuse and even verbally assault us. I am worried about this confrontation in case something nasty happens – when we asked advice from the police they told us not to deal with it ourselves. If I was on my own or with my baby I would be very worried about leaving the house or returning late at night.

Living with this on a daily basis has left us continually stressed, depressed, angry and sleep deprived – there is only a small window from when we wake up until midday where we are not disturbed – and lately we have been hearing the jukebox at 11am on the weekends when the pub is being set up so if we were to get up at 9am – we would only get peace for potentially 2 or 3 hours – there has only been one weekend – the weekend of the changeover when we have been able to relax in our property – every other weekend we have had constant noise and disturbance. We are forced out of our garden by the noise, we cannot have windows open due to the noise and we are too embarrassed to have friends especially with small children over because of the offensive language and drunken behaviour that goes on in and outside the pub. We are extremely concerned about the prospect of having a baby in this environment.

For the last 5 months we have made numerous calls to report noise nuisance to Environmental Health, we have kept records, had the Community Patrol out numerous times and had the matron device installed twice, we have made several phone calls to the police and licensing department, we have completed the application for a licensing review, and had meetings and phone calls with Enterprise Inns and Environmental Health – it has been a mentally and emotionally draining experience and the noise and nuisance has continued unabated until this point.

In regards to the license – we think that the opening hours and the live music license are totally inappropriate for the premises and the area – being mainly residential.

Environmental Health Recommendations, suggestions by the police and offers put forward from Enterprise Inns

We had a meeting with Jim Pope from Enterprise Inns and Lisa Cox from Environmental Health on Thursday 20<sup>th</sup> May. We told Mr Pope about all our problems and The Environmental Health Dept shared their recommendations. There are several measures that we fully support – but we don't think all the problems are addressed in the report included in the agenda.

Noise from music – we discussed the recommended acoustic review of the premises and Environmental Health have recommended that all required works are completed in full. A further discussion with Jim Pope revealed that from Monday 1<sup>st</sup> June there would be no live music until there had been an acoustic review. Jim Pope revealed that if the quote for the works was too great then the brewery would be happy to take live music and karaoke off the license. I said that this was all well and good except that there would still be noise pollution from the people in the pub coming through the walls and that there were some areas where acoustic integrity would need to be addressed regardless of live music or not.

Jim Pope also said regarding the noisy fan that he was happy to sort out a timer so we didn't have to hear it 24 hours a day – we want this to be carried out as soon as possible.

We talked about the noise outside the back of the pub and Jim Pope said that he wouldn't have a problem with removing all tables and chairs and discouraging people from being outside with a no drinks outside policy. Lisa Cox said that ideally nobody would be permitted out the back except that at present the toilets are outside – we think the possibility of moving or joining the toilets to the interior of the pub should be explored further as we do not think it acceptable to have to put up with noise at the front and back of the pub – the license is for up to 60 people in the main pub and 150 in the function room which is potentially a lot of noise for us to have to deal with at the back of our property where our lounge and bedroom are. Also our property is laid out differently from the pub which means that sound travels up to the windows at the back of our house from the outside as well as through the walls.

Finally we talked about the noise, anti social behaviour and crime and disorder outside the front of the pub. The police suggest that there be door staff on the door of the pub to control the noise, trespass, anti social behaviour and littering – other pubs in Cowick Street have this measure and we think that this would be the only solution for us being a terraced house actually attached to the pub – we want to strongly push for this to be part of the license. I suggested alongside door staff the possibility of fencing off the pub during opening hours with temporary fencing subject to council approval with clear signs showing the designated smoking area and also saying please do not trespass on the private properties near to the pub.