

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE HELD AT  
FOLLATON HOUSE, TOTNES ON THURSDAY 21 AUGUST 2014**

**Present:** Cllrs Baverstock, Blackler and Squire  
N Wopling, Licensing Officer  
S Nightingale, Solicitor  
Kathryn Trant, Member Services Manager

**Members also in attendance:**

Cllrs Cuthbert, Saltern and Wright

**In attendance and participating:**

Mr James Kershaw - Environmental Health Officer (EHO)  
Mr Gavin Collett – Licensee’s Legal Representative  
Mrs Annette Hird – Licensee  
Mr Sean Bruce – Acoustic Consultant  
Mr Vincent – Neighbour

**Also in attendance:**

Georgina Fox – Other person under the Act – Environmental Health –  
Provided witness statement of noise witnessed on 11<sup>th</sup> May 2014, available to  
give evidence if required – represented by applicant James Kershaw.  
Sarah Harcombe – Other person under the Act – Environmental Health –  
Provided witness statement of noise witnessed on 25<sup>th</sup> May 2014, available to  
give evidence if required – represented by applicant James Kershaw.  
Ms Bracher – accompanied Mr Vincent.  
One member of the public observing – an Ivybridge resident.  
Graham Munson – Business Support / Licensing Manager SHDC.  
Sarah Clarke – Licensing Manager WDBC

**LSC.3/14 APPOINTMENT OF CHAIRMAN**

**RESOLVED**

That Cllr Baverstock be appointed Chairman for the duration of  
the meeting.

**LSC.4/14 DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of  
business to be considered during the course of the meeting and the following  
were made:

Cllr Blackler declared a personal interest by virtue of having known Mr Vincent some years previously. Cllr Baverstock declared a personal interest by virtue of having met Mr Vincent at Jaguar car shows. Both Members remained as part of the Sub Committee and took part in the discussion thereon.

LSC.5/14 **TO DETERMINE AN APPLICATION FOR THE REVIEW OF A PREMISES LICENCE AT THE IMPERIAL INN, 28 WESTERN ROAD, IVYBRIDGE PL21 9AN**

The Chairman began by advising those present that this Sub Committee had previously been due to meet on 24 July, however, in order to ensure that all relevant information was available the meeting had been postponed to 21 August 2014.

The Licensing Officer presented the application and summarised the background to the report. In addition, the Sub Committee was reminded of the Live Music Act 2012 which stated that conditions in relation to live music were not enforceable from 8am to 11pm.

The Environmental Health Department of South Hams District Council was requesting that the conditions originally placed on the licence be reapplied to the licence and the only way to do this for the conditions to be enforceable would be through the review process. The Sub Committee was being asked to consider if it was appropriate for conditions, disapplied under the Live Music Act, to be reapplied in this case and also if further conditions would be appropriate.

**1. Address by the Licensee's Legal Representative**

The Licensee's Legal representative began by stating that the Sub Committee had four options and these were to do nothing, to issue an informal warning, to impose the original conditions or to impose further conditions. He noted that there was a typographical error in the report and that reference to an event on 10 May 2014 was incorrect as no event had been held on this date and that it should have stated 11 May. He also asked Members to note that once the issue had been brought to the attention of the Licensee, steps were taken to address matters. An event had been held on 3 August when experts had been present and the levels of music had been deemed acceptable. So the works carried out had rectified the problem. Should the Sub Committee decide to impose an informal warning, the steps already taken should be taken and those steps would now form part of the licence so to reverse them would be a contravention of the licence. In summary, the Sub Committee was being asked to deal with something that has already been resolved. Finally, he confirmed with the Applicant that no decibel readings had been taken when Environmental Health officers had visited the premises.

## 2. Environmental Health Officer (Applicant) Report

The Environmental Health Officer (EHO) began by advising the Sub Committee that in addition to the four options outlined by the Licensee's Legal Representatives, there was a fifth option which would allow them to apply or remove some conditions. He went on to state that Members would note there had been communication with the Licensee in relation to noise. There had also been contact with the previous owner. The premises were within a terrace of properties which made noise difficult to control. It was accepted that works had been undertaken and the situation was much improved. However, there had been an issue of public nuisance. On occasions when Environmental Health had visited the premises (11 & 25 May 2014) the noise levels had been unacceptable. When he attended the premises on 3 August the noise levels had been acceptable, however, a review was still necessary as the conditions could not currently be enforced and behaviours could slip. He would recommend being able to control noise levels and would request the Sub-Committee add a condition that would enable this to be enforced. The Review should proceed and conditions be reapplied, along with a condition relating to a sound limiter.

In response to a question from the Chairman on how a noise limit could be set, the EHO advised that subjective tests would be undertaken in the premises, the neighbour's house and the garden. A decibel level could be taken, and tonal assessments may also be used to assess frequency levels. The limit would apply over a period of time and because the levels would be set against background noise levels it was common to use subjective levels rather than specific decibel levels.

The Licensee's Legal Representative reminded the Sub Committee that other Environmental Health regulations would still apply, without the need for conditions to be reapplied. The EHO accepted this point, but outlined how the other regulations may not be appropriate, and added that as the Licensing Authority the Council still had the duty to ensure that licensing objectives were met.

The Licensee's Legal Representative asked for confirmation that there were no issues with noise nuisance on the day that an event took place, after the sound insulation works had been carried out. The EHO gave this confirmation.

The Licensee's Legal Representative asked for an indicative cost of the sound limiter equipment that the EHO was recommending. The EHO responded that the equipment could be purchased for less than £500, although in response to questions, he did agree that the annual visit and report that would also be required had not been factored in to the cost. The type of limiter that the EHO was recommending would be fitted to the electrical supply and would cut the power if noise levels reached above a specified limit for a period of time. The Licensee's Legal Representative wanted the Sub Committee to be aware that the total cost to the Licensee of this equipment would not simply be a few hundred pounds.

### **3. Address by the Neighbour**

Mr Vincent advised the Committee that he suffered with ill health and required peace. He had lived in the property next to the licensed premises for many years. There had never been a problem with noise until 10 years ago when noise started to penetrate his house. When he asked for the volume to be turned down on a couple of occasions, it had turned up. He did not want to stop the music but wanted to ask that it be played at a sensible level. The sound consultant had turned up unannounced and the music that day was not as loud as it had been. There have been occasions of verbal abuse from customers of the premises and he could no longer trust them to keep the volume down themselves.

The Licensee's Legal Representative asked Mr Vincent if the music that had been played on 3 August had been at an acceptable level. He responded that it had been but the volume did not increase at the end of the evening as it had on previous occasions. He was merely asking for a sensible volume and for that to be controlled.

### **4. Address by the Licensee**

Mrs Hird advised the Sub Committee that she had taken on the pub as a community pub. It had always been a busy family pub. Nowhere else in Ivybridge had a garden big enough to hold community events. Music did not take place every week, but events were held to commemorate historic occasions such as American Independence Day and the Anniversary of the First World War. The event in July to mark Independence Day had had a real community spirit and there were about 50 people line dancing. It had taken place in the afternoon.

Since the letter had been received from Environmental Health works had been carried out; all walls have been sound insulated and vents removed and replaced with glass. Customers were asked to use a particular entrance if music was being played. She was doing what she could to work with the neighbours. The volume levels did not rise, in fact, when the sound consultant visited the volume had to be turned up as the music could not be heard. A number of neighbours supported the premises and said the noise from the road was more of a nuisance than noise from the premises. She stated that she was trying to work with the neighbour and run a community pub where children were welcome.

In response to a question from the Chairman, the Licensee confirmed that the only event held outside had been the event in July when music had been played from 2pm to 4pm.

In response to a question from another Member of the Sub Committee, the Licensee confirmed that she was happy to purchase equipment but at what cost? Hers was a small business and in addition to purchase there would be installation costs and regular checks which would also incur a cost. There were other simple handheld devices available that did not plug into the electricity supply but did monitor the noise levels.

## **5. Address by the Sound Consultant**

Mr Bruce introduced himself and advised the Sub Committee of his qualifications. He stated that he had attended the premises on three occasions and had monitored noise levels within the bar and also within the neighbour's property. He confirmed that a high level of soundproofing was now in place and that provided the noise levels were controlled he could see no reason for music events not to take place. In fact, he was accosted by those enjoying the events pleading with him not to stop the events taking place.

The Licensee's legal representative asked the sound consultant to confirm the two types of noise. The sound consultant advised that there was broadband or general noise which was easier to ignore than noise with tonality. He added that often complainants suffering from noise nuisance could be 'tuned in' to it.

In response to a question from the Chairman asking for clarification in relation to the sound consultant's recommendations, the sound consultant confirmed that a handheld device for less than £100 to measure noise levels would be acceptable. This would be a device that could be used by all members of staff within the premises. Whilst the speaking test could be used (i.e. can two people communicate within those noise levels), it is often better to have physical equipment to measure the levels.

In response to this comment, the EHO raised concerns that this particular equipment would only provide a snapshot of the volume and therefore would be of limited value. The equipment he was recommending would measure noise levels and cut off the power supply to the music equipment if the volume exceeded a specified level over a specified period of time. He also felt it would be important for the Licensee or staff to walk around outside for five minutes whilst music was being played to get hearing levels back to normal, and then re-enter the premises and assess if the levels were too high.

## **6. Response by Licensee's Legal Representative**

Mr Collett summarised the points made during the Review and the options available to the Sub Committee in their deliberations. He reminded the Sub Committee that work had been undertaken at the Licensee's expense to address the problems raised and noise levels were now at an acceptable level for all parties. The Sub Committee would be aware of the high number of closures of public houses, but here was a Licensee who had not walked away but instead, at considerable expense, was trying to continue with her business.

Prior to the Sub Committee adjourning, the Licensing Officer reminded Members of the conditions that would be reapplied, if the Sub Committee took the decision to disapply the exemption under the Live Music Act.

(The Sub-Committee adjourned in the presence of Mrs Nightingale to determine the licence and reconvened at 12.noon).

## 7. The Decision

We have considered the application for the review of the premises licence of the Imperial Inn, Western Road, Ivybridge.

We have considered the Statement of Licensing Policy, the government guidance and our obligations that relate to the promotion of the licensing objectives.

We have read carefully the written representations received and listened to statements from persons here today. We have also considered the conditions proposed by Environmental Health.

It is our decision that it is appropriate to lift the suspension of conditions on your Premises Licence afforded by the Live Music Act 2012 and give renewed effect to the existing conditions relating to live music on the licence in accordance with Section 177A(3) of the Licensing Act 2003.

It is our decision that this is appropriate for the following reasons:

The evidence of Mr Vincent indicating the history of excessive noise at the premises.

The evidence of the Environmental Health Officers of the importance of managing the noise.

The potential for continued noise nuisance if the noise levels are not managed by re-imposing the existing conditions on the licence.

The Committee does not impose any additional conditions, but recommends that the licence holder uses suitable sound monitoring equipment to manage the noise at a level acceptable to both the neighbor and the Environmental Health Officers.

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Chairman