

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Licensing (2003 Act) Sub-Committee

30 July 2015

AUTHOR/S: Director, Health & Environmental Services

APPLICATION FOR A REVIEW OF A PREMISES LICENCE UNDER S.51 OF THE LICENSING ACT 2003 FOR OVER COMMUNITY ASSOCIATION, THE DOLES, OVER CB24 5NW

Purpose

1. To consider the application made by Mr D Christian for the review of premises licence number SCDCPL0230, currently in place at Over Community Centre, The Doles, Over, Cambridgeshire CB24 5NW, (**Appendix A**) for consideration by the Licensing Sub-Committee and to establish whether:
 - There is sufficient evidence, that indicates any breach of the Licensing Act or any conditions imposed under it as part of a licence, held by Over Community Association in respect of the Over Community Centre
 - If evidence is found, what the proportionate response is to address the situation, in accordance with the Licensing Act 2003

Background

2. Over Community Association have held a Premises Licence for provision of regulated entertainment and sale of alcohol by retail since the introduction of the Licensing Act 2003 on 25 November 2005. Attached to this report is a copy of the current licence (**Appendix B**) and a map showing the proximity of the complainant to the Community Centre (**Appendix C**).
3. During the period 25 November 2005 to November 2013 no complaints were raised by any residents or responsible authorities about the activities at Over Community Centre.
4. Mr Christian moved into the area in May 2013 and in November 2013 the Council received a complaint (**Appendix D**) via Housing Services, regarding noise from Over Community Centre on Sunday 23 November 2013, which Mr Christian stated was affecting his viewing of the television during the evening. Mr Christian claimed that he could not hear the television even though it was turned up to 75% of its maximum volume. A housing officer discussed the issue with Mr Christian and advised him of the Council's noise investigation procedure. Following this complaint, Russell Watkins, an Environmental Health Officer (EHO) employed by the Council at the time, contacted the Community Centre to advise them that a complaint had been received by the Council. On this occasion Mr Christian made no further complaints to Housing, Licensing or Environmental Health. It appeared that the complaint was an isolated incident and no further action was deemed necessary.
5. During July 2014 Mr Christian made 2 calls reporting 3 incidents of noise specifically relating to loud music and noise from people leaving the premises. Both the contact centre and Ms Stallabrass, the Council's Licensing and Communities Officer, advised Mr Christian to compile a noise diary over a four week period in accordance with the Council's Noise Investigation Policy.

6. Upon consideration of the complaint relating to music and noise from people, whilst there was no clear evidence that the noise arose from licensable activities Ms Stallabrass wrote to the Management of the Community Centre on 28 July 2014 advising them that a complaint had been received and reminding them of the necessity to comply with the conditions attached to their licence. Subsequently, Sean Watkiss, Manager of Over Community Centre contacted Ms Stallabrass by telephone, that in view of the complaints, he proposed to do additional boundary checks at regular intervals and to do hand held noise assessments. He also confirmed that he had reiterated to staff the necessity to keep doors and windows closed during licensed events.
7. Mr Christian did not return the noise log sent in July and in accordance with policy the complaint was closed at the end of August.
8. Further complaints were then received by Mr Christian in October relating to doors being left open whilst music was being played and people being noisy outside of the premises.
9. The matter was investigated by Russell Watkins (EHO) who referred to the Licensing Officer (Ms Stallabrass) in his consideration of the most appropriate course of action. His investigation included the installation of noise recording equipment inside Mr Christian's house to establish whether a statutory nuisance was taking place and to identify the times for licensing purposes. During the period 11 November 2014 to 2 December 2014 a number of 5 minute snapshot recordings were made which showed that on several occasions music was audible in Mr Christian's property at an intrusive level.
10. Between October 2014 and February 2015 the EHO and the Licensing Officer, in accordance with the Council's Enforcement Policy conducted a mediation process between parties to establish sound levels that were set at such a level that both were satisfied. This was achieved on 16 January 2015 and the noise limiter in the main hall was set on 21 January 2016 to cut out at levels above those agreed.
11. Complaints from Mr Christian continued to be received and noise recording equipment was installed again in Mr Christian's home on 17 February 2015 to ascertain if noise causing a disturbance related to licensable activities.
12. Recording with the noise kit took place during Feb/March 2015 (**Appendix E**) and the following summary of the evidence evaluated is set out below
 - a. 11 recordings were made (7 of which were of the 18th Birthday Party on 28/2/15)
 - b. 2 recordings made at 22:47 and 22:55 on 28 February captured some shouting/screaming/crying of a female from outside the property with faint voices/people noise detectable in the distance and a faint bass beat
 - c. 9 recordings captured internal movements, talking and sound from the television or radio within the property.
13. Investigation showed that the noise recordings related to the following events taking place at the premises.

Date	Event	Sound File	Subjective assessment of recordings
28/2/15	• 18 th Birthday	SE004 –	1. No music heard

	Party held in the White Room	SE010 (7 separate recordings between 22:39 – 23:28)	<p>2. Some shouting/ screaming/crying heard from outside- female Faint voices detectable in distance Faint bass beat heard, otherwise very quiet</p> <p>3. Faint people noise heard in distance</p> <p>4. Coughing, very quiet, virtually nothing audible</p> <p>5. Coughing, very quiet, virtually nothing audible</p> <p>6. Coughing, motion noise close to microphone, male voice</p> <p>7. Very quiet, virtually nothing audible</p>
6/3/15	<ul style="list-style-type: none"> • Wedding Reception held in the White Room • Singers & Drummers Concert 	SE011(19:25)	Male voice talking- quiet, in another room. Talking about noise levels, conversation interspersed with swearing Possible faint TV sound in background
10/3/15	<ul style="list-style-type: none"> • Zumba Class 	SE012 (20:47)	Coughing TV noise- quiet Conversation between male and female in house Movement close to microphone
13/3/15	<ul style="list-style-type: none"> • Rehearsal for Over Girl Guides Show 	SE013 (19:48) & SE014 (19:50)	TV heard faint in background Pull chord type light switch, shortly followed by WC flush Kettle being filled, then sound of it heating up Breathing and movement close to microphone

14. Of the activities taking place it is the view of the Licensing Officer that none were licensable due to the type of activity taking place i.e. a dance class or were a specific exemption such as rehearsals or time periods covered by the provisions of the Live Music Act (**APPENDIX F**) (S.182 Guidance ch 15 on).
15. These findings were discussed fully with Mr Christian at a meeting held at the council offices on 17 April 2015 and a summary letter was sent by Mr Bebbington on 23 April 2015 (**Appendix G**).
16. Mr Christian has continued to disagree with the Officers findings and has lodged further complaints, detailed in paragraph 21 of this report.
17. On the 3 June 2015 Mr Christian requested that the existing premises licence be reviewed (**Appendix A**) due to alleged ongoing breach of conditions and noise emanating from the premises. Mr Christian's statement in support of the application is

detailed below:

*“Dear Review Board I am requesting you to look and review the licence of the named premises because conditions of the licence are not being upheld. On July 21st 2014 I Douglas Christian raised a complaint with South Cambridgeshire District Council regarding excessive noise coming from the Over Community Centre. It was in October when the council decided to investigate after police reports made to Cambridge police Environmental Health Officers installed sound equipment in my property in November 2014 for a period of three weeks the highest reading was 65dbs and interpreted as an interference. On January 17th The Environmental Health Team adjusted the sound limiter in the community centre to reduce the volume level with instruction to the licensee not to use maximum base tone volume this has been ignored. I have proceeded with the councils complaint procedure and addressed the complaint with the Government Ombudsman Office of which is in the process of being authorised for a investigation into the conduct of the councils actions
I Douglas Christian am not employed my wife was diagnosed with dementia and became fully incontinent in September 2014 the council are fully aware of this my wife’s sleep patterns are all over the place and she needs constant attention I have to sleep and rest when I can and when she is in bed its my private rest time but not when you have noise pounding into your house all I want is peace and quiet in my own home of which we are entitled.”*

18. Whilst it is the view of the Licensing Officer (Mr Bebbington) that no sufficient breach of the legislation or any conditions attached have taken place, the appeal has been granted on 15 June 2015 to allow all sides to present any evidence that may not have previously been available and to act in full accordance with Government guidance which states:-
 - a. *“It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.”*
19. In view of this review, appropriate notices were displayed at the premises; responsible authorities were notified in accordance with legislative procedures inviting representations either for or against the licence to be received by the licensing section no later than the 14 July 2015.
20. Representations (**copied in full at Appendix H**) have been received from the following :-
 - a. Environmental Health
 - b. Licensing Officer
 - c. The Over Players
 - d. Over Day Centre
 - e. 7 Residents living in the vicinity of the premises
 - f. Over Community Centre
 - g. Mr Christian

Summary of Evidence/representations (full details included at Appendix H)

21. Mr Christian has provided further detailed evidence in support of his call for a review, this briefly comprises :
- Covering letter and itemised list of documents to be used in evidence
 - Licence Review Complaint Summary: Details of his tenancy and the history of the complaints about noise, sound limiter reset, reference to reports to police since 21 January 2015, concerns regarding conflicts of interest, comments on licence conditions and sound levels, and a closing statement.
 - E-mails detailing issues of noise since the limiter was set (these have been cross-referenced with the Community Centre Bookings (**Appendix I**) and highlighted in **bold italics**. They include the Puddleduck's sports day, Zumba class, carnival committee fundraiser, Over sports end of season party and a charity fundraiser 80's evening.
 - Compiled report, including Letter from Russell Watkins dated 19 January 2015, confirming his visit to set the limiter and a summary of facts from the meeting with Myles Bebbington at South Cambridgeshire Hall on 17 April 2015.
 - Police reports made since limiter reset in January 2015, (these have been cross-referenced with the Community Centre Bookings (**Appendix I**) and include charity fundraiser 80's evening, Over Sports end of season party (2 calls), football session on the all-weather pitch and a 30th birthday party.
 - File note of Claire Whiteman, Housing Officer, relating to a tenancy visit made to Mr Douglas Christian after he visited the Over Community Centre.
 - Map of the area showing the location of the Community Centre and 33 The Doles.
 - Two witness statements obtained by Mr Christian
 - Noise guidance document, containing numerous cut and paste references from the internet.
 - Public protection document, an advice note prepared by Central Bedfordshire for organisers of large events.
 - Proposed actions for sub-committee, suggesting controls that might reduce the impact of noise.
22. Over Community Centre have outlined the management controls and measures implemented in promotion of the licensing objective to prevent public nuisance and supplied a list of events which have been held at the venue since April 2014 or are booked to take place over the coming months. Briefly the measures include:
- a. Schedule of service requirements and terms and conditions of the hire signed upon booking requiring that
 - i. The Hirer shall ensure that the minimum of noise is made on arrival and departure
 - ii. Noise control equipment is operational within the hall. Instructions regarding use must be adhered to. Non compliance will result in a power cut off.
 - b. A notice permanently situated by the front door asking customers to leave the premises quietly to avoid disturbing local residents.
 - c. The main hall has been fitted with a sound monitor for the past 14 years. The equipment monitors sound levels and cuts the power when sound levels are too high for the pre-set levels. This level was reduced in February 2015 following consultation with officers of South Cambridgeshire District Council and agreement of all parties.
 - d. Staffing – the Duty Manager is present at each event to monitor the front doors and periodically check the perimeter of the site to assess the noise

levels. Additionally the front doors are monitored by CCTV and can be viewed by staff in the bar. For some events SIA approved door supervisors are employed.

23. The Environmental Health Officer concludes “recordings taken in February/March 2015” at Mr Christian’s home “appear to demonstrate the volume of music has been reduced to a level that was virtually inaudible.” And “considering these recordings there is no evidence to substantiate the allegations that the management of the community centre are acting in a manner that is contrary to the licensing objective of preventing public nuisance when live or recorded music is played at the premises”. A chronology of complaints and actions taken by Environmental Health is attached at **Appendix J**.
24. Seven residents living in the vicinity of the premises have made representations in support of the community centre:
- a. The Over Players (an amateur dramatic society) purport that they are “mindful” of volume levels during performances, particularly relating to music” and stress that the “Management Committee acts as a good neighbour with surrounding residents” and has done so “since 1999”.
 - b. Over Day Centre affirms the use of equipment to monitor noise levels during events at the centre and that they have not noticed any unacceptable noise from people leaving these events. Neither have they received any complaints themselves.
 - c. Mr Brian Smith, a local resident states “I support the centre as much as possible and have never yet found it to be a public nuisance. The staff are very approachable and are always alert to the effects that noise might have on their closest neighbour to the point of taking events inside the building if they think it might cause offence.
 - d. Ms Amie Baker, a local resident confirms “there is no juke box in the community centre. They always keep all the doors shut to prevent noise. The staff will always crack down on any nuisance behaviour although I have only ever seen children being a little naughty.”
 - e. Mr Rob Bevington, a local resident emphasised that “The community centre does everything it can to limit the noise emanating from the various functions that it supports. This is in the form of being strict in turning music off promptly at the end of the night in line with its licensing agreement. Staff (and visitors) closing exit doors and internal doors if inadvertently left open. Functions never go on later than allowed”
 - f. Ms Samantha Nicholson another local resident agrees “external doors closed, staff asking customers to keep the noise down when leaving the premises and respect others”
 - g. Mr Brown, a local resident lives directly adjacent to the Community Centre and is Mr Christian’s neighbour, he believes that “the licence granted does not result in any public nuisance, neither from the centre activities nor from the people using it”. He adds, “music is never unreasonably loud and events always finish at a reasonable time and in our view, the licence is treated responsibly”.
 - h. Mr & Mrs Blanchflower, who live in the vicinity, affirm that “we (very occasionally) hear activity from the Centre, it is never unreasonably loud and always ends at a reasonable time.” It is their view that “OCC manage the facility and their licence considerately and responsibly.”
 - i. Ms Peck, who lives in the vicinity, simply states “I live in the area of the community centre and I haven’t experienced any antisocial behaviour or noise that is too excessive”.

Licensing Act information relevant to this hearing

25. The Licensing Act 2003 came into force on the 25 November 2005 amalgamating a number of previous pieces of legislation administered by the Magistrates Courts and Local Authorities There are 4 key objectives which all representations and decisions must relate to, these are:-
 - a. The prevention of crime and disorder;
 - b. Public safety;
 - c. The prevention of public nuisance; and
 - d. The protection of children from harm.

26. The Act brought together licensing the sale of alcohol and regulated entertainment all to be administered and enforced by Local Authorities Within the original piece of legislation. Licensable activities are defined as :-
 - a. the sale by retail of alcohol;
 - b. the supply of alcohol by or on behalf of a club to, or to the order of, a member of
 - c. the club;
 - d. the provision of regulated entertainment; and
 - e. the provision of late night refreshment.

27. To be licensable, one or more of these activities needs to be provided for the purpose (at least partly) of entertaining an audience; has to be held on premises made available for the purpose of enabling that activity; and must also either:
 - a. take place in the presence of a public audience, or
 - b. where that activity takes place in private, be the subject of a charge made with a view to profit

28. There are a number of exemptions that mean that a licence (or other authorisation) under the 2003 Act is not required. the following activities are examples of entertainment which are not licensable:
 - a. activities which involve participation as acts of worship in a religious context;
 - b. education – teaching students to perform music or to dance;
 - c. the rehearsal of a play or performance of music for a private audience where no charge is made with a view to making a profit;
 - d. Morris dancing (or similar)
 - e. Incidental music – the performance of live music or the playing of recorded music if it is incidental to some other activity;
 - f. Incidental film – an exhibition of moving pictures if it is incidental to some other activity;
 - g. A spontaneous performance of music, singing or dancing;
 - h. Garden fetes – or similar if not being promoted or held for purposes of private gain;
 - i. Television or radio broadcasts – as long as the programme is live and simultaneous;
 - j. Games played in pubs, youth clubs etc. (e.g. pool, darts and table tennis);
 - k. Stand-up comedy; and
 - l. Provision of entertainment facilities (e.g. dance floors)

29. As a result of deregulatory changes that have amended the 2003 Act since its inception, no licence is required for the following activities:

- **Plays:** no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
 - **Dance:** no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500 .
 - **Films:** no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser
 - (a) gets consent to the screening from a person who is responsible for the premises; and
 - (b) ensures that each such screening abides by age classification ratings.
 - **Indoor sporting events:** no licence is required for an event between 08.00 and 23.00 on any day, provided that those present do not exceed 1000.
 - **Boxing or wrestling entertainment:** no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
- m. **Live music:** no licence permission is required for a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
 - n. **a performance of amplified live music** between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - o. **a performance of amplified live music** between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - p. **Recorded Music:** no licence permission is required for any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - q. any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - r. Events held in private are not licensable unless those attending are charged for the entertainment with a view to making a profit (including raising money for charity). For example, where a party is held for friends in a private dwelling featuring amplified live music, if a charge or contribution is made solely to cover the costs of the entertainment, the activity is not regulated entertainment. Similarly, any charge made to the organiser of a private event by musicians, other performers, or their agents does not of itself make that entertainment licensable – it would only do so if the guests attending were themselves charged by the organiser for that entertainment with a view to achieving a profit. The fact that this might inadvertently result in the organiser making a profit would be irrelevant, as long as there had not been an intention to make a profit.
 - s. Schedule 1 to the 2003 Act also makes it clear that before entertainment is regarded as being provided for consideration, a charge has to be:

- t. made by or on behalf of a person concerned with the organisation or management of the entertainment; and
- u. paid by or on behalf of some or all of the persons for whom the entertainment is provided.

Considerations

- 30. The Licensing Act 2003, places a general duty on the Licensing Authority to arrange a hearing where it receives an application for review by an interested party.
- 31. The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives. Including:-
 - a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time.
 - modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
- 32. The Sub-Committee is reminded that Licensing Authorities do not have the power to judge the decision of any other process such as an Environmental Health decision, the Corporate complaints procedure or an Ombudsman decision.

Options

- 33. When determining the application the Sub-Committee is reminded that each case presented to the Sub-committee must be considered on its individual merits. Where action is deemed *appropriate and proportionate* for the promotion of the Licensing objectives, the sub-committee may take any of the following steps:
 - (a) The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives
 - (b) to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - (c) to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing or recorded music (where it is not within the incidental live and recorded music exemption);
 - (d) to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - (e) to suspend the licence for a period not exceeding three months;
 - (f) to revoke the licence.

Implications

34. Financial	N/A
Legal	Both parties will have a right of appeal to a magistrates court within 21 days beginning with the day on which the appellant is notified of any decision made by the Licensing Sub-Committee
Staffing	N/A
Risk Management	N/A
Equality and Diversity	N/A
Equality Impact Assessment completed	No This hearing is by way of a specific appeal and does not affect any policy adopted by SCDC
Climate Change	N/A

Conclusions / Summary

35. The application before the Sub-Committee is for the review of premises licence number SCDCPL0230 currently in place at the Over Community Centre, The Doles, Over.
36. Mr Christian as an interested party has applied for a review, as in his opinion the premises breach both the Licensing Act 2003 and conditions imposed upon them by virtue of the Act.
37. The Sub-Committee must deliver their decision with the Licensing Objectives in mind contained within S.4 of the Act within 5 working days of the hearing.
38. In accordance with guidance, the Sub-Committee should give comprehensive reasons for the decisions made in anticipation of any appeals to the Courts. Failure to give adequate reasons for decisions made in determining the review may in itself give rise to grounds for an appeal.

Background Papers: the following background papers were used in the preparation of this report:

Licensing Act 2003
Amended Guidance Issued under S.182 of the Licensing Act 2003
South Cambridgeshire District Council Licensing Policy

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