

## **LICENSING SUB-COMMITTEE 4**

Tuesday 22<sup>nd</sup> November, 2011 at 10.00 am  
in the Council Chamber, The Council House, Dudley

### **PRESENT:-**

Councillor Taylor (Chairman)  
Councillors A Finch and Ryder

### **Officers**

Mr R Clark (Legal Advisor), Mrs J Elliott (Licensing Officer) and Ms K Farrington – All Directorate of Corporate Resources.

### **7      APOLOGY FOR ABSENCE**

An apology for absence from the meeting was received on behalf of Councillor Mrs Roberts.

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### **8      APPOINTMENT OF SUBSTITUTE MEMBERS**

It was noted that Councillor Ryder had been appointed as a substitute member for Councillor Mrs Roberts for this meeting of the Sub-Committee only.

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### **9      DECLARATIONS OF INTEREST**

No Member made a declaration of interest in accordance with the Members' Code of Conduct.

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### **10     MINUTES**

#### **RESOLVED**

That the minutes of the meeting of the Sub-Committee held on 7<sup>th</sup> June, 2011, be approved as a correct record and signed.

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APPLICATION TO VARY A PREMISES LICENCE – THE EARL OF DUDLEY, 135 WELLINGTON ROAD, DUDLEY

A report of the Director of Corporate Resources was submitted on an application for variation of the premises licence in respect of The Earl of Dudley, 135 Wellington Road, Dudley.

Mr Hines, the Premises Licence Holder was in attendance at the meeting.

Also in attendance was Ms Frances Johnson, Principal Food and Occupational Health Officer, Councillor M Davis, Ward Member for St James's Ward and Ms Louise Monk, Environmental Health Officer (observer), all objecting to the application.

Following introductions, the Licensing Officer presented the report on behalf of the Council.

It was noted that West Midlands Police had raised no objections to the application but requested that the conditions outlined in paragraph 11 of the report submitted to the meeting be attached to the Licence.

The Principal Food and Occupational Health Officer expanded on the representations made, which had been previously circulated to all parties prior to the meeting. She indicated that the premises was located close to a residential area and stated that if any further extension of licensable activity was approved, she feared that it would increase the potential for noise disturbance to residents in the vicinity of the premises.

It was reported that there had been a history of noise complaints against the premises. In total, five complaints had been received from five different complainants since August 2003. The Principal Food and Occupational Health Officer informed the Sub-Committee that investigations had recently been carried out following a recent complaint relating to alleged noise nuisance from amplified music at weekends. The complainant was requested to keep a noise diary sheet during August 2011 and it was noted that noise from amplified music caused disturbance until the early hours of the morning on the 13<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> August, 2011. The issue was then referred to the Anti-Social Behaviour Unit in August 2011. Since that time the complainant had contacted the Anti-Social Behaviour Unit on four separate occasions however, due to limited resources available at the time, the complainant's house had only been visited once, at 00.05 hours on 6<sup>th</sup> November 2011. On that occasion, it was reported that amplified music could be heard from inside the complainant's property and as a result, a Statutory Noise Abatement Notice was issued to the Premises Licence Holder, Mr Orville Hines, on 16<sup>th</sup> November, 2011. Evidence to support this matter was circulated to all parties prior to the meeting.

The Principal Food and Occupational Health Officer indicated that for the reasons stated above and outlined in the written representations, the application for the variation of the premises licence should be refused in the interests of prevention of public nuisance. However, she stated that if the Sub-Committee was minded to approve the application, the following conditions be considered:-

- (1) All windows and doors (including fire exits) to the premises shall be kept closed, except for access and egress, during any regulated entertainment.
- (2) All exit doors within the premises to have signs asking customers to leave the premises quietly and respect local residents and their premises.
- (3) That a noise management plan be drawn up and implemented to include the management at the premises proactively monitoring noise levels at the front, side and rear boundaries of the premises at regular intervals during regulated entertainment and providing local residents with a contact number which would be answered and responded to in the event of any noise issues being experienced by local residents.
- (4) Whenever entertainment beyond incidental music was provided, a sound-limiting device be fitted and used on all power points used in connection with amplification equipment to the satisfaction of the local Environmental Health Officer in consultation with local residents.

In responding to questions from Councillor Davis, the Principal Food and Occupational Health Officer confirmed that the complainant had contacted the Anti-Social Behaviour Unit on four separate occasions over a period of three weeks, however, only one visit had been made by an officer.

Arising from a question raised by a Member, the Principal Food and Occupational Health Officer clarified that the request from Environmental Health was to refuse the extension of licensable activity.

A Member of the Sub-Committee queried why it had taken so long to investigate the alleged noise complaints when there was evidence that complaints had been received regarding noise nuisance since 2003. In responding, the Principal Food and Occupational Health Officer outlined the procedure Environmental Health followed once a complaint had been received. She stated that letters would have been sent to the Premises Licence Holder informing him about the nature of the complaints received and would have been asked to take necessary measures to remedy the situation, otherwise investigations would be undertaken to substantiate any allegations. On those previous occasions when complaints had been received and letters sent out, no further complaints had been received, therefore no follow up investigation was necessary.

Councillor Davis, on behalf of his constituents, expressed concern in relation to allowing the provision of live music and the potential increase in noise nuisance it would create to local residents. He indicated that he did not object to businesses expanding, however, he stated that residents in the Dudley area should be entitled to live a peaceful life. He further stated that should the Premises Licence Holder give assurances that strict control would be taken to prevent noise nuisance, he had no objection to the provision of live music being included on the current Premises Licence.

In response to a question raised, Councillor Davis clarified that he strongly objected to the extension of licensing hours.

In responding to further questions raised, Councillor Davis indicated that he had not approached residents in the vicinity of the public house and confirmed that he had only received one telephone complaint since the Premises Licence Holder had applied to vary his premises licence.

Mr Hines then presented his case, and in doing so informed the Sub-Committee that he had been the Licensee of the premises since 2003 and indicated that he had bought the Earl of Dudley public house because of its position. He stated that at the time he bought the premises, there had been no houses located in the vicinity. He indicated the public house was an ideal location due to his ethnic background. He stated that the premises was open to the public 365 days a year, however, the function room was only used on Friday and Saturday evenings.

Mr Hines indicated that since he had become the Premises Licence Holder of the public house, only the odd complaint had been received against the premises relating to noise nuisance and stated that he had always turned the music down following receipt of a complaint. He stated that complaints had only been received when DJ's had used their own equipment and assured the Sub-Committee that only the premises' own equipment was now being used during entertainment. Mr Hines indicated that following complaints received, he had approached a number of residents and provided them with his contact number and stated that he would be keen to meet with local residents should they have any concerns in relation to the premises in order to try and resolve them, as he was committed to working with local residents to make the premises a success.

On the day of the 13<sup>th</sup> August 2011, Mr Hines indicated that speakers had been positioned on the car park as he had been holding a memorial day in aid of a regular customer and his girlfriend being involved in an accident on the Birmingham New Road, which had resulted in fatalities.

On 5<sup>th</sup> November, 2011, Mr Hines indicated that a party had been taking place to celebrate a customer's birthday. On that occasion, the DJ had been using his own equipment. He stated that he had not been present at the premises during that evening, however, when he returned at approximately 12.20am on 6<sup>th</sup> November, 2011 he asked the DJ to turn the music down as he himself thought that the music had been too loud. He stated that he had spoken to Environmental Health the following day and they had confirmed that no complaints had been received after 12.30am on 6<sup>th</sup> November, 2011.

Mr Hines continued by stating that regular checks were undertaken and logs kept to monitor and control the level of music. He indicated that he had a good relationship with the Police and confirmed that he accepted all the conditions suggested by the Police to be attached to his licence, outlined in paragraph 11 of the report submitted to the meeting. In responding to a question, Mr Hines confirmed that during regulated entertainment, either he or a member of his staff patrolled the vicinity of the premises and particularly outside the complainant's house to monitor the level of music. If it was considered too high, the music would be turned down. A log of each patrol was recorded in a book.

In concluding, Mr Hines indicated that he had invested a lot of time and money into the premises and re-iterated his comment above in that he was committed to working with local residents to make the premises a success and assured the Sub-Committee that all residents would be warmly welcomed.

In referring to the list of conditions suggested by the Police, Mr Hines confirmed that he would be willing to enforce all the conditions set out. Mr Hines confirmed that the majority of conditions, particularly employing a female door supervisor whenever the function room was being utilised and Challenge 25 policy were already in place.

Mr Hines also accepted all the conditions suggested by Environmental Health Officers with the exception of installing a sound-limiting device. He assured the Sub-Committee, however, that should a further complaint be received, he would ensure that a sound-limiting device was installed.

The Legal Advisor then indicated that by allowing the provision of live music it would potentially increase the level of noise emanating from the premises. In responding, Mr Hines indicated that live music was played at a lower level and disagreed with the comment made by the Legal Advisor. He also confirmed that entertainment did not commence at 5.00pm, as stated in the complainant's evidence and could be verified by the Police.

The Licensing Officer then referred to Mr Hines's current licensing conditions and stated that he had breached his licence by allowing speakers to be positioned on the car park. In responding, Mr Hines acknowledged that he had breached his current conditions of licence and assured the Sub-Committee that it would not happen again. He indicated that since the smoking ban had come into force, he had been encouraged to entertain customers outside.

In response to a question from a Member, Mr Hines confirmed that the function room was not now used every weekend.

In responding to a question in relation to the complaint received on 19<sup>th</sup> August, 2011 alleging excessive noise levels until 3.00am, Mr Hines confirmed that no entertainment had been taking place on that evening.

In responding to further questions, Mr Hines confirmed that whenever the function room was not in operation, music from a CD player was played at a reasonable level which was controlled from behind the bar area.

In responding to questions from Members, Mr Hines confirmed that the age range of his customers was between eighteen and eighty with the majority being local residents. He indicated that the premises had a dominoes team and would occasionally compete against teams from the London area.

In responding to further questions, Mr Hines confirmed that he shared his time between two public houses, however he was responsible for the Earl of Dudley as Designated Premises Supervisor and that a manager had been positioned at the other premises. He also confirmed that he was present at the Earl of Dudley every day and occupied the premises on an average of two to three nights a week.

In responding to a question, Mr Hines confirmed that the main reason for his decision to apply to extend his licensing hours was to be in a position to be competitive. He stated that he was currently losing customers at night to nightclubs in Merry Hill and Wolverhampton.

In summing up, the Principal Environmental Health Officer indicated that she appreciated that Mr Hines had taken steps to monitor noise levels, however, if any further extension of licensable activity was approved, she feared that it would increase the potential for noise disturbance to residents in the vicinity of the premises.

In summing up, Councillor Davis re-iterated comments made previously.

In summing up, Mr Hines indicated that he was a responsible Licensee and had only received five complaints relating to noise nuisance since 2003. He stated that he was committed to working with local residents to make the premises a success, however, he indicated that if the fears of the local residents were fulfilled, under the licensing laws, there was a remedy in that the application could be brought back to the Sub-Committee for review.

Following comments from all sides, the Legal Advisor stated that the Sub-Committee would determine the application made from Mr Hines on the information and comments made at the meeting by all parties.

The parties then withdrew from the meeting in order to enable the Sub-Committee to determine the application.

The Sub-Committee, having made their decision, invited the parties to return and the Legal Advisor then outlined the decision.

## RESOLVED

- (1) That the application for variation of the premises licence in respect of The Earl of Dudley, 135 Wellington Road, Dudley in relation to the extension of the licensing hours be refused.
- (2) That the application for variation of the premises licence in respect of The Earl of Dudley, 135 Wellington Road, Dudley in relation to live music be approved on the following dates, times and conditions:-

### Live Music/Recorded Music/Provision of facilities for Dancing

Monday – Thursday	12.00 – 00:00
Friday and Saturday	12.00 – 02.00
Sunday	12.00 – 01.00

## CONDITIONS

- (1) CCTV to be installed to the specification and locations of the West Midlands Police.
- (2) CCTV to be recording at all times the premises is open for any licensable activity.
- (3) All images from the CCTV system to be held for a minimum of 28 days.
- (4) All images held on CCTV to be made available immediately on request by any of the responsible authorities.
- (5) Signage at the premises to say that there is an absolute zero tolerance in relation to misuse of drugs.
- (6) Any person within the premises who is suspected of being in possession of unlawful drugs will be asked to submit to a search. If they decline, they will be removed from the premises.
- (7) Security Industry Authority (SIA) registered door supervisors to be employed at the premises at a ratio agreed with the West Midlands Police.
- (8) All door supervisors to display a valid SIA badge whilst on duty.
- (9) Door supervisors should ensure that numbers of customer are appropriately monitored and controlled.
- (10) Door supervisors shall escort from the premises any person(s) believed to be acting in a drunk or disorderly manner using minimum force necessary and without causing further disorder.
- (11) Door supervisors shall exclude any person subject to a pub watch/court order or licence holder imposed ban.
- (12) Door supervisors shall search customers and exclude those suspected of carrying illegal drugs or carrying offensive weapons.
- (13) Door supervisors shall confiscate any illegal drugs and deposit them in a drug safe recording the seizure in the incident book.



- (14) A Door Supervisor Register shall be maintained and detail the name and badge number of the door supervisor and timings of duty. The register shall be produced on request to representatives of the West Midlands Police, Dudley MBC or the Security Industry Authority.
- (15) Door supervisors shall not allow entry to any person who appears to be in an intoxicated state.
- (16) The Designated Premises Supervisor shall ensure that at least one female door supervisor is on duty at the entrance in order to search female customers.
- (17) Door supervisors shall ensure that customers leave the premises including the car park area in a quiet and orderly fashion.
- (18) Persons who appear to be under the age of 25 shall be required to provide proof of age by way of passport, photo driving licence or pass accredited proof of age scheme.
- (19) The premises shall adopt a written drug policy, which should be approved by the West Midlands Police.
- (20) The Designated Premises Supervisor shall maintain an incident log book and record any incidents of disorder, ejections, entry refusals giving rise to an incident or seizures of weapons or drugs. The book shall be provided on request to any representative of the West Midlands Police or Dudley MBC.
- (21) Where outside promoters will be using their details together with any other artists shall be forwarded to the Police Licensing Officer at least 14 days before the event.
- (22) All windows and doors (including fire exits) to the premises shall be kept closed, except for access and egress, during any regulated entertainment.
- (23) All exit doors within the premises to have signs asking customers to leave the premises quietly and respect local residents and their premises.
- (24) That a noise management plan be drawn up and implemented to include management at the premises proactively monitoring noise levels at the front, side and rear boundaries of the premises at regular intervals during regulated entertainment and providing local residents with a contact number which would be answered and

responded to in the event of any noise issues being experienced by local residents.

- (25) Whenever entertainment beyond incidental music is provided, a sound-limiting device be fitted and used on all power points used in connection with amplification equipment to the satisfaction of the local Environmental Health Officer in consultation with local residents.
- (26) There are to be no alcoholic drinks consumed on the car park.

### REASON FOR DECISION

The Committee has heard evidence of complaints by local residents in relation to noise, which have been monitored by Environmental Services, and a Noise Abatement Notice served. The applicant has discussed these complaints with residents and the Police and he has accepted the recommended conditions put forward by the Police. The applicant has also accepted the conditions proposed by Environment Health, with the exception of installing a sound-limiting device. The applicant has demonstrated a willingness to avoid noise nuisance and therefore the Sub-Committee grants the extension of the premises licence to include live music, but imposes the condition also that a sound-limiting device must be installed.

The Sub-Committee refuses the application to extend the time for the sale of alcohol. A significant number of complaints regarding noise record that loud music was being played beyond the time permitted by the premises licence. For this reason the Sub-Committee decided that the hours for the sale of alcohol and playing of live music should not be extended beyond the current hours.

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The meeting ended at 12.15 pm

CHAIRMAN