

## MID DEVON DISTRICT COUNCIL

**MINUTES** of a **MEETING** of a **LICENSING SUB COMMITTEE A** held on Tuesday 10 December 2013 at 10.00am in the Mayoralty Room, Tiverton Town Hall

### **Present**

**Councillors:** Mrs E M Andrews, N V Davey and M A Lucas

### **Also Present**

**Councillor:** R M Deed

### **Also Present**

**Officers:** P N Williams (Head of Environmental Services), G Pratt (Legal Advisor), T Keating (Licensing Officer) and S Lees (Member Services Officer)

## 4 **CHAIRMAN – ELECTION**

**RESOLVED** that Cllr N V Davey be elected Chairman of the Sub Committee for the meeting.

Cllr Davey then took the Chair.

## 5 **REVIEW OF PREMISES LICENCE OF DUVALE PRIORY, BAMPTON**

Consideration was given to a report \* of the Head of Environmental Services in response to an application which had been received to review the premises licence of Duvale Priory, Bampton.

The Members and Officers introduced themselves and it was agreed that the meeting should be heard in public session.

The Chairman informed those present that only licensing issues would be considered during the course of the meeting and that any issues relating to planning would not be relevant.

The Licensing Officer informed the Sub Committee that the licensed premises being considered today was a function hall. At the time of the original application the Police had been the only responsible authority to provide a response. No other representations were received and the licence was granted on 7 June 2010. In September 2013 the Licensing Authority had received a petition regarding Duvale Priory which was from a total of 20 households. All Households were sent information on how to apply for a review of the premises licence and one was subsequently received on 24 October from Mr Chris Winter. The Licensing Manager had delegated authority to decide which issues in the review application were relevant under the licensing objectives and had concluded that the only issues of relevance related to noise. The Licensing Officer further informed the Sub Committee that 9 letters from local residents had been received and 3 responses had been made by responsible authorities. In conclusion he advised the Sub Committee of the options available to them which included, no action,

modifications to the existing conditions, exclusion of a licensable activity, a suspension of the licence or a complete revocation of the licence.

Mr Newman, solicitor for the applicant for the review, had sent Sub Committee Members additional paperwork since the publication of the agenda and Members confirmed that they had received this additional paperwork. He informed those present that he intended to call witnesses forward to provide additional evidence. In his view he felt that there were issues relevant to the licensing objectives of public safety and crime and disorder given that there was a busy main road adjacent to the premises and there had been reported sightings of trespassing and swimming in the River Exe during the early hours. Mr Newman referred the Sub Committee to the existing conditions of the licence and particularly highlighted the one stating that 'All events held on the premises will be privately booked in advance'. He suggested that given events were advertised on the internet and made mention of being able to purchase tickets in advance that members of the public were in fact attending events at the premises and therefore they were not private. It was his and his clients view that the premises were poorly managed and an example was given where the licence holder had left the premises one evening following a wedding leaving the premises in the hands of the wedding guests. There had also been many complaints of high levels of noise emanating from the premises, much of this going on beyond the hours stated in the licence. In his opinion the conditions of the licence were vague, there were no restrictions on the maximum numbers of people attending an event and did not include restrictions on the levels of noise. He also questioned whether as a converted 'agricultural barn' the premises were suitable for licensable activities.

The applicant for the review, Mr Chris Winter, explained that he had lived in Steart for three years but had been conscious of elevated noise levels and disturbance for the past 18 months. He had reported incidents to Bampton Town Council and the Police but they had not been very helpful. He stated that he had been unable to spend time outside in his garden during the summer as a result of the noise coming from Duvale Priory. Loud noise late at night had also prevented him from sleeping and he felt this to be intrusive. He was concerned that following a wedding in September 2013 nobody had prevented wedding guests from partying in the river despite this being after the hours stated in the licence. On another occasion in October 2013 he had heard 'wailing' and 'drumming' before 8am on a Sunday morning by people attending a 'religious event'. He further stated that events were widely publicised on the website and footage available on 'YouTube'. Mr Winter described the noise whilst trying to sleep as 'intolerable' and 'disturbing'.

Mr Dunkley, solicitor for the licence holder, questioned why, if Mr Winter had been so concerned by noise from Duvale Priory for the past 18 months he had only reported complaints on 7 occasions. Mr Winter responded by saying that he was aware of other occasions when the noise had disturbed him but he did not have sufficient evidence of those. Mr Dunkley stated that one of the complaints related to noise on 6 July but his clients did not have a record of any events taking place on that date. He stated that there were holiday cottages on the site and suggested that it was possible the noise was coming from them rather than the licensed premises. Mr Dunkley also stated that the 'drumming' referred to by Mr Winter was not a licensable activity.

Mr Martyn Baker from Highwood Cottage was then asked by Mr Newman to explain how he and his wife had suffered as a result of noise from the licensed premises. He described the noise coming from a Rock and Roll party at New Year as almost like being at a 'fairground'. He had tried to make a formal complaint but had either been told it was not a Police matter or that the Council did not have the funding to pay overtime to its officers. Again he spoke of 'loud thumping music', not being able to sit out in the garden and being unable to sleep. He had been informed by an Environmental Health Officer that an acceptable level for external noise was 35 decibels but Mr Baker had never seen a reading for himself. He had been offered the chance of recording the noise on specialist equipment but he did not see the point of doing this if the licence holder was aware as noise levels would probably be adjusted. Mr Baker stated that because of the topography of the area, sound echoed up the valley. He had not spoken to the licence holder directly about his complaints as the previous owner of the premises had not taken any notice.

In cross examining Mr Baker, Mr Dunkley stated that many of his complaints referred to non-licensable activities. He also made the point that the loudness of noise was subjective and what might be loud to someone might not be to another. Mr Dunkley again said that some of the complaints were made on dates when his client had no record of an event taking place in the licenced premises and put it to Mr Baker that perhaps the noise could be coming from the holiday cottages or from other non-licensable activities. The suggestion was made that perhaps Mr Baker and his colleagues were being overly sensitive with regards to noise.

Mrs Gill Hookins, another local resident, also complained about being unable to sleep and music being heard internally within her home. She described it as being so loud she was unable to hear her television. She also stated that music could be heard beyond the permitted hours of the licence. She was unsure whether this was coming from the licensed premises or the holiday cottages. She stated that she was not overly sensitive regarding noise. Mr Dunkley stated again that on the night of one of the complaints, 29 July 2013, there was again no record of an event at Duvale Priory. He further stated that on the two occasions noise level had been monitored by noise recording equipment and the results had indicated that the levels were within an acceptable range.

Mrs Saunders from Halfpenny Cottage stated that in her opinion the licensing hours were too long especially on Friday and Saturday evenings. She also complained about drunken guests near to her property using foul language. Such incidents had affected the quality of her life.

Mr Dunkley then presented the case for his client, Mr Mark Underhill, the licence holder. He began by stating that there had been no representations made by the local residents when he had originally applied for his licence. A number of allegations had been made that did not refer to licensable activities and also a large number of complaints where there was no record of any event taking place at the Priory. The remaining complaints refer to evidence which conflicted with that of Environmental Health and the noise expert Mr Shaddick. He reminded the Sub Committee that it was incumbent upon them to consider the objective evidence before them as per section 182 of the Licensing Act. He referred Members to a comment made by the Environmental Health Officer which stated that there was "not a statutory

nuisance” and also to the fact that the Police had visited the premises on several occasions and concluded that there was not a problem.

Mr Underhill had held a licence for functions at Duvale Priory since 2010. He stated that he was not aware of any event finishing after the permitted hours. If he had been aware of a noise nuisance he would have asked for the music to be turned down. He confirmed that he was always the last person to leave an event being the person responsible for locking up. There had only ever been one occasion when he had left an event early leaving 10 guests in the premises who had switched the music back on. He said that he had learnt from this and had always been the last to leave since. It was confirmed that a risk assessment was undertaken by Mr Underhill for each event to ascertain whether or not door staff were required. He had been running a holiday let business on the site for the past 22 years and had received no complaints until last year.

In relation to the premises themselves Mr Underhill stated that the building had an inner skin block which had been fully insulated and the roof had been underlined with acoustic wool and finished with wooden panels. He further stated that all organisers were informed it was a condition of the hire that all guests attending an event must stay on site. However, he did confirm that he did not operate a system of signed contracts with event organisers. He confirmed that he had not been aware of the noise monitoring being undertaken by Environmental Health on 13 July 2013 and therefore did not adjust the noise levels. He further stated that he did not have any involvement with how an event was advertised.

Mr Newman queried the actual finishing times of some of the events and suggested that they did finish beyond the permitted hours according to his clients. He asked Mr Underhill whether he accepted that there had been complaints. Mr Underhill responded by saying that these were nothing to do with the licensed premises and that he could not be held responsible after the premises had been locked up. Discussion took place regarding what responsibility a licence holder has to ensure people outside of a licensed premises behaved appropriately. The legal advisor informed those present that he or she would have a responsibility for the immediate area outside of the premises but not for an area some distance away, however, this was a grey area and was a question of degree. Mr Newman responded by saying that there was a well-established duty on licensee’s to ensure people do not get excessively drunk. Mr Newman went on to suggest that many of the functions held at Duvale Priory were not private, tickets were sold and therefore it could not be said that the public were excluded.

Mr Shaddick from ‘Soundguard Acoustics’ addressed the Committee stating that he had conducted a music noise impact assessment at and around Duvale Priory between 9<sup>th</sup> to the 22<sup>nd</sup> September. He stated that the British Standard for an acceptable noise level at the boundary of a building was 42 decibels. He had visited the site several times as well as the neighbouring properties where he also conducted noise monitoring. He stated on 21 September 2013 music could only be heard at Higher Duvale and Highwood Cottage but at a very low level, the noise of the river had dominated at the other properties. The topography of a site and the wind direction at the time would have an influence. Internal monitoring of noise at Duvale priory itself was at a level that would be expected and not excessive. Very low levels were recorded outside. When questioned by Mr Dunkley, Mr Shaddick stated

that an acceptable level of noise should not exceed 42 decibels as a free field measurement. A 3 decibel drop internally would probably not be noticed within a building but would have a bigger effect off site. Mr Newman asked Mr Shaddick how the Committee could improve upon the conditions of the internal structure of the building. Mr Shaddick referred to page 13 of his report which listed a number of recommendations to further sound proof the building in order to reduced perceived noise disturbance.

Mr Ian Winter, Environmental Health Officer for the Licensing Authority stated that if a noise nuisance was found to occur a noise abatement notice would be issued. This is why they request complainants to complete diary sheets. They were required by law to inform the licence holder when noise monitoring was being conducted. The Council only had two sets of monitoring equipment and knowing in advance allowed them to plan their resources more effectively. Duvale Priory had not been informed of the specific dates just that monitoring would take place. Noise recording equipment was set up within Mrs Hookins property on one occasion. Prior to the event, noise levels were recorded at 29 decibels, during the event itself they were recorded at 31 decibels. A rise of 10 decibels occurred when the doors and windows were opened. After the event with the doors and windows still open the background noise was at 35 decibels. Once the doors and windows were closed this then reduced to 25 decibels, therefore all within acceptable limits. Mr Winter confirmed that Environmental Health were required to monitor a situation completely impartially but need sound evidence if action was to take place.

In summing up Mr Newman stated that it was clear a large number of residents had been affected by what they referred to as 'loud' and 'unpleasant' noise. He felt there had been a lot of inactivity from the responsible authorities. He requested that the existing conditions be clarified and suggested that the Committee consider the recommendations in Mr Shaddick's report.

Mr Dunkley stated that he was concerned there was such disparity between what the local residents were saying and the objective evidence. His client would be happy to agree to a reasonable decibel limit. He was aware that there may have been breaches of the existing licence conditions but he would be writing to Mr Underhill to remind him of his responsibilities. He reminded the Committee that there was no objective evidence of a nuisance and that his client would not want too many additional recommendations that would require spending a great deal of money as planning permission had not yet been granted.

Members of the Sub-Committee withdrew to consider their decision.

In reaching the following decision the Sub Committee have provided the following reasons for their conclusions:

They have carefully considered all of the evidence presented before them.

They have heard the specialist evidence of Mr Rob Shaddick an Acoustic consultant on behalf of the licence holder and Mr Ian Winter an Environmental officer employed by the Council. They also had the benefit of a report by email of Richard Keith-Hill, a Pollution Control Officer of the Council. It appeared that noise levels were low and not at nuisance level. However the Sub Committee felt that very limited monitoring was undertaken.

It was also noted that some of the residents had refused the offer from Environmental Health to have monitoring equipment installed in their homes.

Correspondence had also been received from the Licensing Officer at Devon & Cornwall Police (email dated 14/11/2013) advising Police officers had visited the premises on numerous occasions at varying days and times, with most visits taking place when there had been an event at the property and reporting on all occasions "there have been no concerns from the Police's perspective, all has been in order there".

Against this they heard evidence from the following residents, Mr Chris Winter, Mr Martyn Baker, Mrs Gill Hookins and Mrs Mary Saunders. They also noted that there were a further 5 residents who wrote in generally complaining about noise.

The Sub Committee also had the benefit of seeing diaries prepared by the residents relating to noise issues. In some cases the diaries related to the noise of a water pump, revellers returning from other licenced premises unrelated to Duval Priory and also noise possibly from the self-catering units at Duval Priory. None of these matters related to the licensing function of the premises and were therefore dismissed by the Committee.

Nevertheless the Sub Committee cannot ignore the representations made by the residents where there was evidence that noise was transmitted during a licensing event from the licenced premises. Mr Shaddick in his report dated 13<sup>th</sup> December 2013 at paragraph 8 considered simple approaches that can be used to reduce music noise levels ( MNL ) and it appeared that in his summing up Mr Newman on behalf of the residents welcomed Mr Shaddick's recommendations and Mr Dunkley on behalf of the licence holder was content to agree a reasonable decibel limit.

The Sub Committee have therefore taken on board the recommendations referred to in paragraph 8 of Mr Shaddick's report and have set these out as conditions to be placed on the licence.

The Sub Committee were concerned about certain parts of the evidence of Mr Mark Underhill, the licence holder, relating to the management of the licenced premises in that he did not appear to hold any hire agreements nor an incident book which are conditions set out in the Premises licence consistent with the operating schedule. The Committee have therefore strengthened these conditions.

Accordingly the Sub Committee have come to the following decision in order to address the concerns of local residents with a view to the public nuisance licensing objective.

**RESOLVED** that:

1. The existing conditions under Annex 2 of the licence be amended as follows:
  - a) A Hire Agreement must be adopted between the licence holder and an event organiser and must be in writing. It will be held on the premises and retained for a period of twelve months and made available for inspection by Licensing Officers or Police if so requested;

- b) A written copy of the risk assessment relating to door staff must be retained by the licence holder for a minimum period of twelve months from the date of the event and will be made available for inspection by Licensing Officers or Police if so requested;
  - c) All incidents will be recorded in an Incident Book which will remain on the premises and will be made available for inspection by Licensing Officers or Police if so requested;
  - d) All other conditions under Annex 2 to remain as previously worded.
2. Additional conditions to the premises licence are as follows:
- a) All Music events must operate with all doors and windows fully closed except for access and egress;
  - b) The wooden doors to the rear of the bar must have good close fitting rubber seals and threshold reveals to close existing gaps to be fitted and maintained in such a condition once fixed;
  - c) The lobby doors must have good close fitting rubber seals and automatic door closers to be fitted and maintained in such a condition once fixed;
  - d) Ventilation and existing holes within the fabric of the building must be fitted with acoustic vent covers or sealed if not required and maintained in such a condition once fixed;
  - e) Management must do all it can using mobile phone applications or other noise measuring devices to ensure that music levels do not cause disturbance to patrons or cause nuisance outside;
  - f) The above additional conditions are to be completed by 10<sup>th</sup> June 2014.
3. Delegated authority be given to the Head of Environmental Services to determine appropriate wording regarding internal and external noise levels.

**Informative note:**

It is the Sub Committee's view that the internal noise level should be 90 decibels up until 23:00 hours, there after reducing to 87 decibels. It is also their view that the 'free field' noise level be a maximum of 42 decibels from the external wall of sensitive properties.

(Proposed by the Chairman)

Notes: (i) Report previously circulated; copy attached to signed Minutes.

(The meeting ended at 5.15pm)

**CHAIRMAN**