

BEFORE THE WOLVERHAMPTON CITY COUNCIL LICENSING SUB-COMMITEE

IN THE MATTER OF AN APPLICATION FOR REVIEW OF THE PREMISES LICENCE AT:

The Pheasant Inn, 250 Wood End Road Wolverhampton, WV11 1YQ ('The Premises')

**SUBMISSIONS ON BEHALF OF THE PREMICES LICENCE HOLDER
AND MR PARKES**

INTRODUCTION

1. I am the solicitor for Spirit Pub Company, part of Greene King, and the premises licence holder at The Premises. I have direct knowledge of this matter and have directly engaged with the officers seeking this review. I will make statements from my own knowledge or where indicated from discussions with my client and Mr Parkes.
2. Wayne Parkes is the tenant and operates the premises under a tenancy. Whilst the premises licence is held by Greene King, they do not operate the premises on a day-to-day basis. This responsibility lies with Mr Parkes, who employs all staff and it is his business to run. The relationship with Greene King is best understood as that of landlord and tenant.
3. For the purposes of this submission, Greene King are supporting Mr Parkes. Whilst Mr Parkes has made a representation in his own right and reserves all rights that attach to such a representation (including, for the avoidance of doubt, rights to make representations and/ or appeal any determination), I am currently instructed to make submissions at the hearing on behalf of both the premises licence holder and Mr Parkes.

SUMMARY OF THE FACTS

4. On the 25 July 2023 the Environmental Protection officers served a noise abatement notice on Mr Parkes. He has appealed this notice.
5. On the 28 July 2023 the same officers served a review of the premises licence. This timing is unfortunate for a number of reasons:
 - a. It can be argued this prejudices Mr Parkes right to a fair appeal of the noise abatement notice, as:
 - i. The officers have included evidence within the review that they withheld from Mr Parkes previously

- ii. Much of this evidence will be material to his appeal
 - iii. Mr Parkes is limited in what he can disclose in the review for fear of prejudicing the appeal
 - iv. Greene King, likewise, are limited in what they can disclose for fear of prejudicing the appeal.
 - b. Had the officers waited to see if the noise abatement notice was being appealed, this could have avoided all of the above issues.
 - c. As you will see below, the premises licence holders felt that they were engaged in productive and ongoing discussions about preventing any further noise outbreak at the time of service of the review.
 - d. The review documents disclosed evidence that had been withheld from Greene King and Mr Parkes despite repeated requests for it. Providing this evidence, which could easily be redacted and 'sanitised' to avoid any prejudice, is a source of some concern.
- 6. Because this review was instigated prior to the period for appealing the noise abatement notice ending, we find ourselves in a difficult position. Mr Parkes has every right to appeal the notice and he has availed himself of this right. Therefore these proceedings must not prejudice his right to a fair hearing before the Magistrates Court. For this reason, it might have been prudent to wait and see what the situation was there prior to instigating a review, which is not a time-limited application.
- 7. It is our submission that the application for review not only jumped the gun for the reasons detailed above, we also contend that it is a form of 'double jeopardy' against Mr Parkes who is having to fight two sets of related but entirely distinct proceedings at the same time.
- 8. Further, had the officers allowed discussions that they were engaged in with the premises licence holders to come to fruition, it is likely that the proposal for amendments put to the Licensing Sub-Committee jointly by the applicants and the premises licence holders as part of these proceedings could have been agreed and added to the licence by way of minor variation.

THE PREMISES

- 9. The Pheasant is a long-established pub in Wednesfield. It is fair to say that it has had a chequered history, including issues of crime and disorder when run by previous tenants. Ultimately this led to the premises closing. The Premises was closed for around 18 months up to March 2020. Unfortunately, the previous tenants who had left under a cloud for obvious reasons, left The Premises in a significant state of disrepair.

10. Asa Charlton, the business development manager for Greene King responsible for the area at the time, first met Mr Parkes in February 2020. Following negotiations, Mr Parkes agreed to take on a 5 year tenancy and set about re-developing the pub into the site that is currently trading. Greene King and Mr Parkes jointly invested over £200,000 into The Premises to get it into shape.
11. The Premises opened on the day before lockdown was announced in March 2020. This meant that he then had to immediately shut down for a long period. Throughout this time Mr Parkes worked hard to develop ideas and plans for the pub if and when we was allowed to re-open it.
12. Once Mr Parkes was allowed to open again, he put in place very strict policies and spent a great deal of money on security staff to make sure that the Pheasant was compliant with the ever changing Covid regulations. This was a very difficult and stressful period for all publicans trying to work out what they could and could not do to try to ensure that they could maintain a viable business with significantly restricted trade. It is not suggested that everything was done correctly all the time, not many premises could claim that, but certainly a lot of time, effort and money was put into ensuring that the rules were followed.
13. One of Mr Parkes' first jobs on opening was to clear out the previous customer base and prevent them from returning the pub to old ways. A dress code of no tracksuit bottoms and no work clothes after 6pm was introduced. At first, no under 18's were permitted and under 21's had to be accompanied. Door supervisors were used at weekends, with up to 3 doormen to enforce policies. Metal detector wands and searches were used to ensure that the wrong type of customer was kept from the premises. This was very successful. Now, the Premises attracts families and older customers. It does not really cater for the younger 18 to 30 age bracket.
14. The premises currently employs anywhere up to 8 persons on a busy night, not including door supervisors, musicians and DJs.
15. Mr Parkes is very much involved in the operation. He personally makes a special effort to talk to most customers as they come in, not only to welcome them but also weed out the kind of people he doesn't want as customers. A barred for life plan was introduced, with somewhere in the region of 270 people barred in the first 2 months. Whilst some complained that this was overly harsh, Mr Parkes felt he had to lay down the law.
16. Mr Parkes has ensured that The Pheasant contributes to the local community, towards charities and also the local sports teams. Relatively recently a Wolves shirt was raffled for the

NHS New Cross Hospital and £1,500 was raised. Mr Parkes supports and runs local children events, including a Christmas grotto where last year 300 children were given a little present at no charge to them but a cost of around £1,500 to Mr Parkes. This year, approximately 150 children attended and dressed up for a music event at Easter and were all give Easter eggs.

17. It is fair to say that complaints, also started about the noise upon re-opening, which was not unusual given that all activities had to be conducted outside at various times and even when limited indoor opening was allowed, most customers wanted to stay outside.
18. Because of the complaints, Charlotte Rose from the council suggested a residents meeting Mr Parkes arranged this, delivering around 1000 letters around the whole community. This was well attended with 30+ residents attending. There were a number of compliments about how the pub looked but also a number of concerns raised. One resident raised some allegations about Mr Parkes and previous associations with a different pub. These were wholly untrue, but seemed to colour the opinion of some others. The Council officer present confirmed there was no know association. Mr Parkes and Greene King agreed to work with the residents going forward.

TRADE AT THE PREMISES

1. The Premises is not a 'party venue' as it has been portrayed. Weekday trade (Monday to Thursday is based around food (a Nepalese and regular pub food menu) and televised sports, as well as darts teams on Wednesday and Sunday morning and pool teams on Thursday.
2. At the weekend, entertainment is provided. On Friday a resident DJ plays Motown and reggae. Last orders are taken at midnight with all customers out by 1am at the very latest (usually out by 12.30). Live Entertainment on Saturday starts at 9.15 for 45 mins, with a second 45 minute set 10.30 to 11.15. A DJ then plays until closing time. On Sunday live entertainment is provided from 7.30pm to 8.15pm and then around 9 o'clock for 45 mins. Live music always finishes before 10pm The Premises tends to close around 11.30.
3. Live entertainment is usually in the form of a singer playing to either a single musician or backing tapes. It is not often that full bands play.

THE REVIEW APPLICATION

4. There is no dispute that there have been ongoing discussions about resolving this matter Environmental Protection. Likewise, there is no dispute that on occasion, music has been heard that has been deemed by officers and residents to be excessive. We would accept that on occasions this has been correct. However, we do not accept that all of the complaints have been fairly articulated against the premises for the reasons explained below.

5. Outside events have also received complaints but with the exception of one afternoon during the King's Coronation, outside events were stopped following officers requesting this. We will be seeking to add back in some very limited number of external events each year in line with other pubs, including those in built up and residential areas.
6. However, Greene King and Mr Parkes have at all times sought to work with officers to resolve matters in a satisfactory way for all parties. Mr Parkes has, in conjunction with officer's recommendations, moved speakers and reduced bass levels as requested. Likewise, a significant effort has been made to engage with the main complainant by not only Mr Parkes, but a Greene King business development manager, Bruce Wakeling and operations director Phil Arnold.
7. It is also fair to say that at times discussions between officers, Mr Parkes and Greene King have been frustrating for all parties.
8. With respect to the chronology of events provided, we do not agree that this is a fair or accurate record of the discussions and issues raised. For instance, on a significant number of occasions both orally and in writing since complaints have been notified to Mr Parkes, representatives from Greene King and their solicitors, all three have asked for specific details of the complaints to aid their investigations. None was ever produced until service of the review. For the reasons set out below, this has in fact been a significant contributor in the delay in resolving matters permanently.
9. It would appear from the statements in the chronology that a significant source of noise for the main complainant was from bass beats that could be heard inside the main complainant's premises. Bass travels in different ways through and into structures than other sound types, so whilst music itself may not be heard or deemed at unacceptable levels, even directly outside a property, the bass beat can, in fact, cause a nuisance.
10. An example of how that can be an issue comes from direct evidence agreed by all parties. On Sunday 19th February 2022, Mr Wakeling and a colleague paid an unannounced visit to the premises and met Emma Waites and Dean Gooch from the council on site. It was agreed by all parties that the music levels were acceptable. As the visit was unannounced, it cannot be suggested that the levels were altered to try to 'game' the system. Mr Parkes agreed to keep the levels the same going forward, which he is adamant that he has. As he does not have access to the resident's properties, it was agreed that he would undertake checks at the boundaries, which he has done since.

11. However, that would not take into account how bass travels and could still affect a neighbouring property, even if ongoing checks of levels by Mr Parkes found the levels to be identical to those agreed to be appropriate by all parties at the meeting.
12. At the same meeting on the 19th February, Mr Wakeling gave his number to the resident responsible for the majority of complaints via the officer. Thereafter he was frequently called and would immediately call the premises to investigate the complaint. On these occasions, Mr Parkes would be able to demonstrate that the music levels were not such as to be likely to cause a disturbance either with video evidence standing outside the complainant's house, or taking the calls outside into the garden and front of the property so that the levels could be directly heard. For this reason, Mr Wakeling formed a reasonable conclusion that for whatever reason the main complainant was overly sensitive to noise. This was raised with the officers at the time and on multiple occasions.
13. Mr Wakeling has made further visits to the premises and stayed over prolonged periods to satisfy himself that the levels were those agreed with the officers in February. On each occasion, he has found this to be the case and for this reason reasonably anticipated that the issue had been successfully rectified.
14. The environmental protection officer has argued that Greene King and Mr Parkes have been late to grasp the nettle. At every juncture, Mr Parkes and Greene King have sought to get a full explanation of the dates and times of complaints because their checks were yielding very different results to what they were being told by officers. This would account for a lot of the frustration faced by all parties.
15. Following notification on the 9/6/2023 to Greene King and Mr Parkes that the Environmental Protection Officer intended to serve a statutory noise abatement notice on Mr Parkes I was instructed to speak to the officers directly. I noted that the investigations leading to the decision to serve a notice occurred on the 26 to 28 May and Initial contact was made by telephone on the 13 June. This was followed up by email on the 16 June, which requested full details of the investigations by the officers (as well as details about the times and dates of the complaints) that had led to the threat (at that stage) of a noise abatement notice being served. The email made it clear that following receipt of the above information to confirm the nature of the nuisance witnessed, the following action would be taken (extract from the email of 16 June):
 - a. *A noise limiter to be fitted and set within an agreed timeframe.*
 - b. *We will look at installing an acoustic lobby to the rear of the premises, subject to planning and again an agreed timeframe.*

- c. *We are looking into additional glazing/ potentially installing air conditioning, but this would be dependent upon understanding whether there are grants or other funds that might be available to commercial businesses in relation to upgrading their buildings- and would very much be something that would follow on from the above. We would not commit to these works or a timeframe, but are happy to look at the viability of these measures.*
- d. *No speakers will be placed outside unless otherwise agreed in advance. We do want to discuss the possibility of having limited planned events outside, withing agreed guidelines, and for the benefit of the community (as many premises have- including in built up areas), but of course this will need some further thought in terms of how it might work and what would represent a reasonable compromise for all.*

16. On the 27 June, 11 days later, I chased by email for a response to my request for information so that we could move matters forward. On the 29th June I received an email stating, amongst other things:

'I am sure your will appreciate, however, that in regard to the disclosure of evidence and information, this is of course subject to constraints given that the matter is subject to a formal investigation not least in context of statutory nuisance proceedings, and such material could potentially form part of evidential disclosure in line with normal trial proceedings. The council is subject to specific legal requirements that we cannot of course prejudice.'

The email then expressed the council's wish to find a mutually acceptable and long-lasting solution with Greene King. Greene King set about finding and instructing a company to detail what action was needed. It should be stated we were still expecting to receive the evidence from the officers we had requested in a format that would not prejudice any upcoming case. Indeed, we took the email from them not to be a total refusal to provide anything but a reason for the delay in providing evidence.

17. I was then emailed on the 12 July asking for an update. I emailed the same day stating that I was on holiday for 2 weeks. I also confirmed:

'My client is currently looking at various options including obtaining a noise survey, fitting a limiter for calibration and other potential remedial works. I am awaiting an update from them.'

18. On the 25 July, my first day back in the office having returned the day before for a hearing, I emailed Emma Waites confirming:

'External consultants have been instructed to produce a report on measures that can be taken in relation to noise mitigation at the premises. We have seen a preliminary report dated 21 July which sets out a stepped approach to noise attenuation at the premises, which we are currently looking at in terms of costings and viability...'

Because we had yet to receive any evidence, I also stated:

'We note your comments about not disclosing information to us that might be sensitive, but we would suggest that information, suitably redacted, could be provided in relation to the number of complainants, levels of noise, times, dates etc that would allow for better understanding of the situation, which in turn allows for a more targeted approach... We don't even know whether this is music or people noise that is being complained about.'

19. A noise abatement notice was served thereafter on the same day. As stated above, the noise abatement notice is currently under appeal.
20. The notice of review was then served on 28 July, three days later. It is fair to say that service of this, prior to any period for appeal of the noise abatement notice, during a period where discussions were ongoing about a solution to the issues, albeit without any assistance from officers in providing details of complaints or even their own findings, was a disappointment.
21. That being said, Greene King have completed the fitting of a noise limiter. Speaking to Environmental Protection, it would appear that there have been no further complaints since the noise limiter was fitted and set in early August.

THE REVIEW: OTHER PARTY REPRESENTATIONS

22. It is a fair observation to make that at the heart of this case lies a disagreement between parties as to what should be considered acceptable noise levels from a licensed premises and their neighbour's rights. This review does not touch on the other licensing objectives in any substantial way.
23. Whilst the Police and Licensing Authority have written in supporting the review, neither have provided any evidence of crime and disorder or other issues relating to the undermining of the licensing objectives.
24. Indeed, it is fair to say that Mr Parkes will state that he has been praised by local police for how he has turned the premises around. He has regular conversations with the officers and the fact there is no evidence of crime and disorder associated with the pub demonstrates this.

25. There are three local residents who have submitted representations supporting the review. Outside of any sensible discussion to be had around potential noise issues and how best that balance can be struck, Mr Parkes strenuously refutes and resists allegations that he is a 'thug', 'dodgy', or allows drug use on his premises. Quite the opposite, in fact, given the time taken to ensure that the element of custom that had been responsible for the premises closing down previously was permanently removed from the premises. Mr Parkes, quite reasonably, would expect anyone making such public statements that are harmful to him and his reputation to be able to provide evidence to back up such claims.
26. The licensing authority accepted 25 representations (not including Mr Parkes own representation) in support of the premises. A number of these are detailed and considered views of the operation and management of the premises. In the main they refrain from any vituperative or overly aggressive stance against any other party, including residents. One would have to say that in the main the language used and details provided are measured and far from the picture of a 'thuggish' or 'dodgy' premises that has been alleged. I will go into the substance of these representations below.

PUBLIC NUISANCE

27. The starting point for any discussion of public nuisance is that not all noise is a nuisance and not all nuisance is a public nuisance- the legal test as expressed in the Licensing Act. This is self-evident, of course, but worth exploring in a little more detail.
28. We all have to live with certain levels of noise in our lives; be that road traffic, smells from a local factory, church bells or the chants of a crowd at a football match. Likewise, noise of customers in a pub garden are unlikely to be considered a public nuisance, if within the bounds of what would ordinarily be generated by groups of people enjoying themselves. When it comes to music, the Courts have made it clear that merely hearing the music is not enough- it needs to be a public nuisance when all circumstances are taken into account. Again, some noise from customers leaving a premises should be expected by persons living next door to a pub, restaurant, music venue or sports ground.
29. It is not enough for any party to state that they are disturbed by noise. They must prove that the specific nuisance they say occurs falls within the legal definition of a public nuisance. It is important to remember that the overriding principle of public nuisance is to balance the rights of individuals with the public interest.
30. Another point to bear in mind is that the law is concerned with what the 'average person' would consider a nuisance and does not protect 'abnormally sensitive' members of the public.

31. The term 'nuisance' is not defined in the Environmental Protection Act 1990. The term is to be understood in its common law sense, requiring either a private nuisance or a public nuisance.
32. In this case, the evidence suggests that the fitting of the noise limiter has abated the public nuisance complained of. Given the law requires the Licensing Sub Committee to balance the needs and rights of all parties, including all the residents writing in support of a well managed and highly regarded local community pub, there is no reason why the majority of people should be deprived from the benefit of enjoying the entertainment when the issue has been 'cured'.

REPRESENTATIONS IN SUPPORT OF MR PARKES

33. 25 other persons have written in support of Mr Parkes and what he provides to the local community running the Pheasant. This includes
 - a. customers and local residents (both in a number of cases).
 - b. People living as close as 50 yards from The Premises.
 - c. older customers and residents who remember the pub going back a number of iterations.
 - d. Long term residents of the area

It is worth noting that these do not represent all of the parties who wrote in support of the premises, only those accepted as relevant representations. We have been made aware of others who have written in but did not meet the threshold of a 'relevant' representation.

34. The comments speak for themselves, but it is worth drawing out some of the key points:
 - a. 'Live...about 50 yards away.... And we haven't been hearing any noise from the pub and we are regularly in the garden... for us being elderly, we wish the Pheasant Pub not to close' (appendix 9)
 - b. '... I would never go in there before this as I never felt safe... I am nearly 50, I feel it's the only pub in Wendsfield where I could walk into on my own and feel safe...'
(appendix 10)
 - c. 'Wayne and... have enhanced our community by providing a welcoming family friendly pub, serving great food and entertainment...'
(Appendix 12)
 - d. 'The Pheasant has suffered with consistency and landlords who care in recent times. They appear to be the only ones who have cared and made such a massive effort with the pub... they have a zero tolerance on drugs policy.'
(Appendix 13)
 - e. '...in the 6 years I have lived a stones though [sic] of the Pheasant I have no complaints about noise or anti-social behaviour...'
(Appendix 15)
 - f. 'I'm a... disabled... and this pub has played a vital role in my fight against depression... the landlord and landlady go above and beyond in their efforts to make

the pub safe and welcoming... it's not a rowdy or raucous pub it's a happy place...'
(Appendix 16)

- g. 'I live near to the Pheasant... they have turned this pub around...' (Appendix 17)
- h. 'I live just around the corner and have never had any problems from the pub...' (Appendix 20)
- i. '...it would be a crying shame to loose [sic] this pub due to people saying it's a noise disturbance? Quite frankly it is no where near being loud.' (Appendix 24)
- j. I can say form person [sic] experience and how close to the establishment I live I have never heard any over powering music/ entertainment... (Appendix 26)
- k. 'As a neighbour and resident living in close proximity of the establishment I feel there is no reason for concern... I have even seen him asking some customers to keep the noise levels down when they have left the venue at closing times...' (Appendix 27)
- l. 'I've run the pool and darts for years & always had great backing. Even done charity events... the last raising £4,000 for a young local lad.' (Appendix 29)
- m. 'This public house has brought the community back together...' (page 85- no appendix number)

35. The representations as a whole paint a picture of a publican who has invested heavily in his community, listens to what they want, provides as safe and welcoming place for everyone and tries to ensure that The Premises runs properly and according to the law.

36. Entertainment is a key element to the premises over the weekends. It is very much loved and enjoyed by the customers. To lose this would seriously affect the ongoing viability of the premises.

37. Wolverhampton City Council's Statement of licensing policy states:

The policy aims to promote a positive pattern of licensing and move from an alcohol led culture dominated by a mostly younger age group to create a greater cultural diversity with a wider family friendly age mix where people will feel safe and businesses can continue to thrive.

In this context it is right to observe that Mr Parkes and his team have worked incredibly hard to ensure that the premises is a safe, relaxing and welcome community space that *creates a greater cultural diversity with a wider family friendly age mix where people will feel safe and businesses can continue to thrive.*

THE LAW

38. A review application effectively engages the Licensing Sub-Committee's discretion to arbitrate between the parties and determine whether the premises has undermined the Licensing Objectives or not. Thereafter, having weighed the evidence, it is for the Licensing Sub-Committee to take one or more of the following actions:
- a. Do nothing
 - b. Issue an official warning
 - c. Add/ remove conditions on the premises licence
 - d. Remove a licensable activity
 - e. Suspend the premises licence
 - f. Revoke the premises licence
39. Any action taken must follow the guiding principles of proportionality and must comply with the legal test of *Wendsbury reasonableness*.
40. Any action taken must be *appropriate and no more than necessary* to deal with the issues deemed to undermine the licensing objectives.
41. The S. 181 Guidance to the Licensing Act states:

9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.

10.10...Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

PROPOSAL

42. The premises licence holder has worked with Mr Parkes and the Applicants for review to agree proportionate and appropriate response to the review. This has been presented to the Licensing Sub-Committee and other parties to the review in advance of the hearing.

CONCLUSION

43. Both the Premises Licence Holder and Mr Parkes feel that this review has been brought at a time when they have not been able to fully put forward their case. This is due to the ongoing appeal of a noise abatement notice that was served only three days ahead of the review application. This was also during a time where there was a serious and committed attempt by the Premises Licence Holder and Mr Parkes to work with the officers to resolve this issue once and for all. At the time the review was brought, the officers were fully aware that there was a proposal to fit a noise limiter, to have it properly calibrated and to take further remedial actions if it was deemed they were necessary should this not work. Had the officers held off serving the review until they knew if the abatement notice would be appealed, then in all likelihood, this matter and a proposal very much along the lines of the one before the Committee at the review, could have been dealt with by minor variation.

44. In this case, where there has been a genuine attempt to work with the authorities, irrespective of any discussion around whether the premises licence holder or their tenant have been slow to grasp the nettle, any action taken should not be punitive. It should seek to address the cause of the issues, in this case music outbreak from the premises.

45. Where the applicant for review (especially where the applicant is a responsible authority) has agreed a proposal with the premises licence holder to mitigate the nuisance complained of, such proposal should be given significant weight in determining the matter.

PIERS WARNE

TLT SOLICITORS