

Noise Control from Licensed Premises – enforcement case study



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Backstop licensing condition - noise control

- *‘Noise emanating from the premises as a result of regulated entertainment shall not be clearly audible at the boundary of any adjacent residential premises.’*
- Used in conjunction with a range of other practical conditions



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Clearly audible condition - key points



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- **‘clearly audible’ NOT inaudible**
 - **Allows professional judgement and is within the skill set of EP officers used to making statutory nuisance assessments**
- **‘at the boundary’**
 - **Is an area where Premises Licence holder can potentially have access to (or equivalent locations)**
 - **Assess from inside complainants’ property to avoid ‘technical’ breaches**

Benefits

- Allows compliance to be judged by the PL holder without reference to SLMs or noise consultants
- Don't need to set a specific decibel level so avoids problems with setting a level
 - **too high - not effective**
 - **too low - unnecessarily onerous**
- Don't need to consider specific octave bands etc

Drawbacks

- **Low pass filter issues with buildings**
 - i.e. Noise not audible outside due to background levels, but audible inside due to complainants' building structure filtering out high frequency background noise
- **Officer judgements may be challenged**
 - i.e. If you can demonstrate music noise is clearly audible outside the complainants' property (as detailed by condition) and inside you can also use the impact on complainants to support professional judgements
- **Needs particular consideration for situations with attached properties**
 - Structural noise transmission
 - Is activity appropriate to situation?



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Case study – The Phoenix Club



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- The premises:
 - Three storey Oast House
 - Listed Building and structure is acoustically very poor.
 - Town centre location close to noise sensitive residents (60 metres).
- Following years of intermittent, but persistent noise problems with the former nightclub, it closed.
- New owners acquired the building with plans to turn it into a 'Sports Bar' - given the previous problems with amplified music noise the change of use was cautiously welcomed.

The Phoenix Club cont....



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- Licence conditions proposed and agreed with Licensee
 - required to engage an acoustic consultant to assess the building and suggest noise control measures
 - prohibited from undertaking live or amplified music before Environmental Protection approved in writing the acoustic report and control measures (which must be fully implemented)

The Phoenix Club cont...



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- Noise complaints received on the first night from several local residents
- Held regulated entertainment in direct breach of the licence conditions
- Breaches of the 'clearly audible' condition were witnessed by officers on several occasions
 - **Evidence of breaches obtained inside and outside complainants premises**
 - **A variety of officers witnessed the problem**
- S80 Notice served

The Phoenix Club – enforcement options?



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- Environmental Protection Act 1990
 - Prosecute for breach of S80 Noise Notice?
 - Seize equipment
- Clean Neighbourhoods and Environment Act 2005
 - Fixed Penalty Notice
 - Emergency closure
- Licensing Act 2003
 - Prosecution for breach of conditions under section 136 (1)
 - Review of Licence

The Phoenix Club – action taken

- Review called – revocation requested
- Acoustic report submitted as required by original condition - after review application, but before hearing
- Further discussions and negotiations were held before hearing
 - **This was subsequently felt to be a mistake as it confused the panel – were issues resolved or not?**
- No complainants at the hearing



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The Phoenix Club – the outcome

- Licence not revoked
- Further conditions added effectively requiring compliance with original conditions
- No change in premises operation
- Noise problems continued within weeks of this hearing



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The Phoenix Club – another review



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- 6 Months later the Police again called PL in for review
 - **drug use**
 - **violence**
 - **under age alcohol sales**
- EP team put robust noise case together
 - **supported by residents**
 - **More holistic persuasive case put to panel**
 - **not just technical noise issues (S182 Guidance and case law)**
- Licence Revoked
 - **Appeal pending.....**

Key points – lessons learned

- Get lots of evidence of breaches from several officers - continue monitoring up to hearing
- Don't negotiate after review application – do it before-hand then stop - it may serve to undermine the case and confuse the panel
- Get complainants to hearing – demonstrate the impact
- Need to present a persuasive case to panel not just technical arguments (S182 guidance etc)



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Any Questions?



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