

Licensing Enforcement – The Environmental Health Perspective

Case Study: The Swan

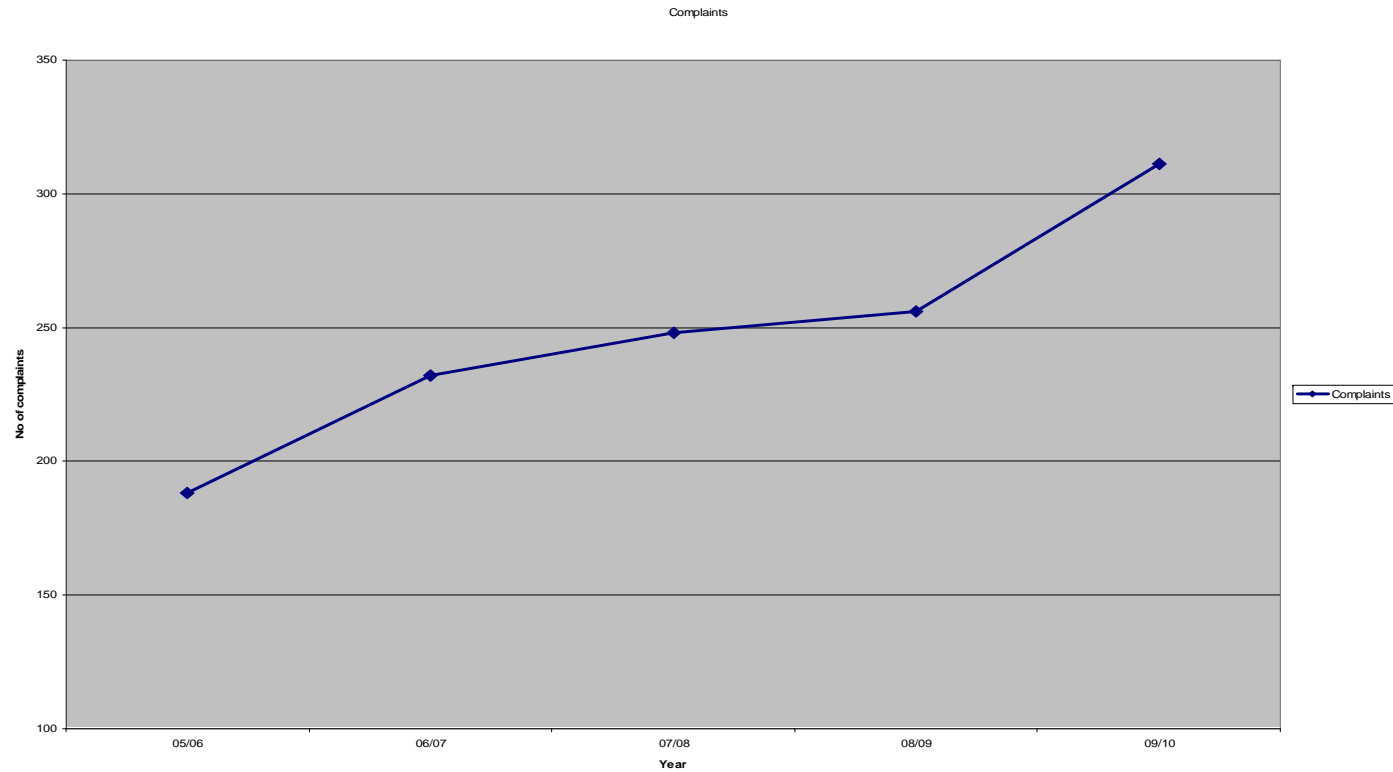
Kirklees Council

- Metropolitan Borough, West Yorkshire
- Separate EH and Licensing Department
- 400,000 population
- 231 Club Premises Certificates
- 1072 Premises Licences (inc off sales)
- 12 EHO/TOs plus 2 NTNO
- 7 Licensing Officers

Complaints

- 2005/06 188
- 2006/07 232
- 2007/08 248
- 2008/09 256
- 2009/10 271 (so far)
- Projected 311 09/10

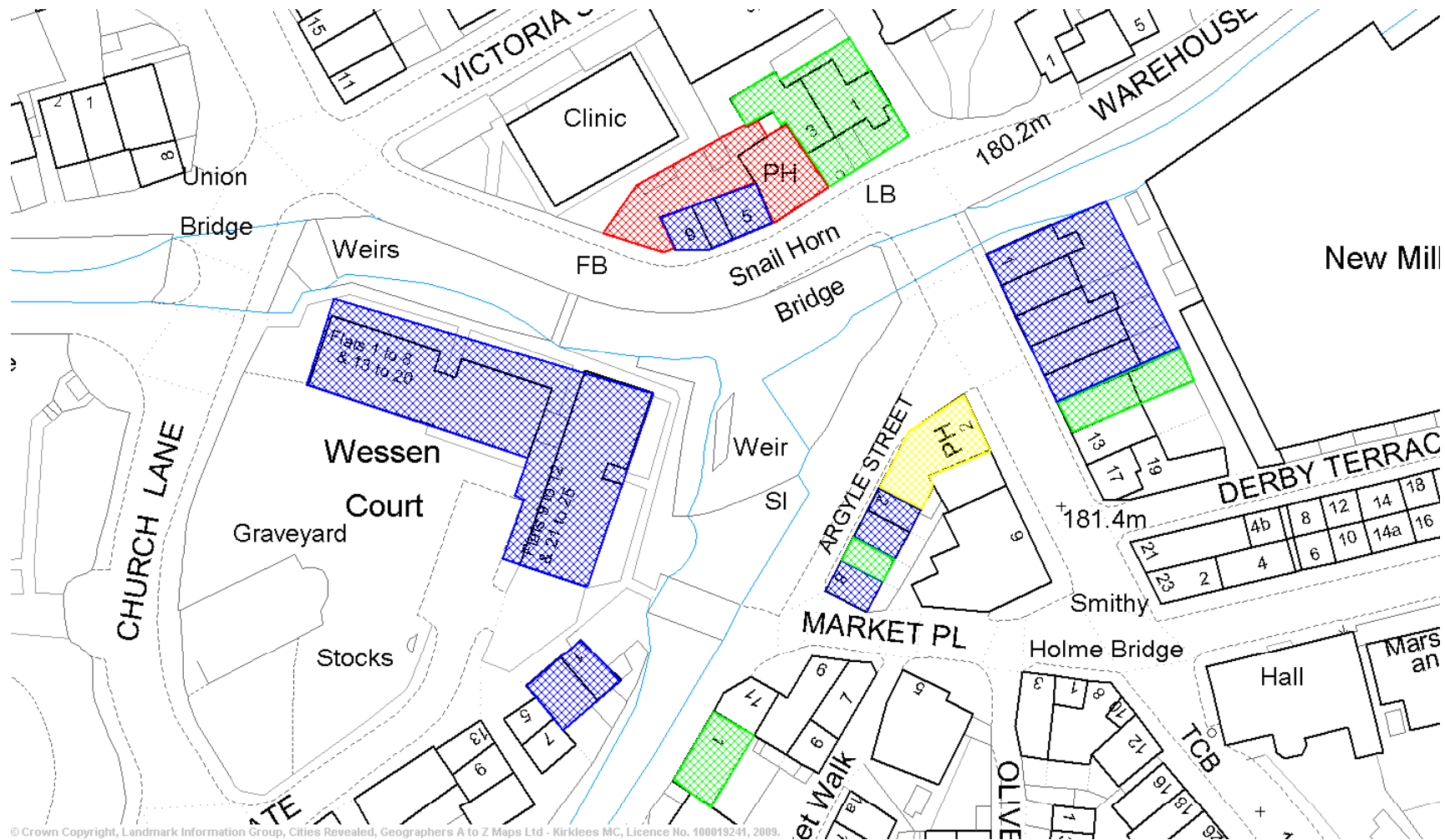
Graph



Case Study

The Swan
Marsden





The Swan

- Mandy Hester took over as DPS in Nov 08
- Immediately started causing problems
- Complainants tried to resolve informally
- May 09 Brewery (D Thwaites plc) involved
- 31 May first call to Environmental Health
- By all accounts problems had got significantly worse by this point

Premises Licence

- D Thwaite's plc landlord
- MH Licence Holder
- MH DPS
- PL had been in place since 2005
- Licensable Activities
 - Live Music
 - Recorded Music
 - Sale of Alcohol
- Sun – Thur: 10am to Midnight
- Fri & Sat: 10am to 2am
- Inaudibility Condition

Inaudibility

Noise from amplified and non-amplified music, singing and speech arising from regulated entertainment emanating from **inside** the premises shall be controlled so as to be inaudible **inside** any noise-sensitive location in the vicinity of the Swan.

To enable the applicant to check whether this condition is being met, suitable monitoring position(s) may be agreed with the Responsible Authority. To comply with the condition, noise from the premises shall not be audible at this point.

Informative Note:

Licensees are advised to carry out a simple “sound check” outside the nearest noise sensitive property by listening to the music etc. coming from regulated entertainment. If the music etc. is clearly audible then it is likely that this condition is being breached. Therefore steps should be taken to reduce the volume of the noise.

In case of dispute, the applicant can verify inaudibility by demonstrating zero increase in the LAeq, 1 min (music playing) over the background LA90 (music off) and

zero increase in the L10, T VS L90, T exceedence in each 1/3 octave band between 40Hz and 160Hz.

The Swan

- 31/5 Initial call to NTNS – audible but no nuisance
- 16/6 further calls (live band) – visit cancelled at 0220 as music stopped.
- 18/6 DPS contacted and given advice/warned
- **22/6 Letter to DPS**
- During this time complaints continuing

The Swan

- 26 and 27 May Complaints to NTNS – Statutory Nuisance Witnessed
- **29/6 Abatement Notice Served**
- 02/7 Notice breached
- 3, 4 and 5 July Complaints inaudibility condition breached and times of licence
- **08/7 Noise Equipment Seized**

Post Seizure

- 10/7 Further complaints
- 11/7 Further stat nuisance witnessed
- 13/7 Inaudibility breach
- Options:
 - Seize again
 - Prosecution
 - Review
 - Injunction

Options

- Seizure
 - Didn't work the first time
 - Suspected equipment was being removed
- Prosecution
 - Agreed joint prosecution
 - Would take time to prepare
- Review
 - Thwaites transferred licence back to them
 - Removed authorisation to conduct LA
- Injunction
 - Not considered
 - Costly and risky

Needed action now

- Premises Closure Order
 - Under Antisocial Behaviour Act 2003 Pt 1A
 - Power came into force Dec 08
 - Available to Police and Local Authorities
 - Where persistent and serious nuisance or crime and disorder exists.
 - Where other options have been tried or are inappropriate

Need action now

- Closure under Licensing Act
 - Power only available to Police
 - Nuisance must be occurring at the time
 - Closure for 24 hours only (can be extended)

Inappropriate

Premises Closure Order

- Lasts for 3 months (extendable)
- Local Authority has control
- Excludes everyone from the premises
- It is a criminal offence for anyone to enter
- Civil standard of proof required

Procedure

- Gather evidence and take statements
- Multi-agency meeting
- Formal Police consultation
- Local Authority serves Premises Closure Notice
- Court hearing within 48 hours
- Court makes Premises Closure Order
- Further hearing after time period if extension required

The Swan

- Agreement for Premises Closure Order
 - 16 July
- Multi-agency meeting
 - 28 July
- Premises Closure Order granted by District Judge
 - 21 August



What Happened Next

- Mandy Hester is being prosecuted for
 - 2 Breaches of Abatement Notice
 - S80 of Environmental Protection Act 1990
 - 5 Breaches of Premises Licence
 - S136 of Licensing Act 2003
 - Post conviction ASBO applied for
- Thwaits held possession proceedings and evicted Mandy Hester
- PCO lifted on day of eviction

Lessons

- Multi-agency approach essential
- Don't assume that others know their own discipline
- Need streamlined procedures
- Need to act quick

Discussion points

- Use of inaudibility conditions
 - 182 guidance states no duplication
 - Higher standard than statutory nuisance
- When/where/how they should be applied
 - Which premises
 - After 2300/at all times
 - Inside/on the boundary

Thanks

- Further reading
 - Home Office Guidance for Premises Closure Orders
 - Section 182 Guidance for Licensing Act