

Response from William Lim -

Prevention of crime and disorder

“The Community Safety Unit have received...” – Muddles passage is a public thoroughfare that connects Ingles Road to Bouverie Road West. We have done a survey of the Muddles Passage The vantage points from complainants’ properties overlooking it do not have the benefit of allowing a simultaneous view of the bar entrance around to where the complainants allege anti-social behaviour arising from bar patrons. It would therefore be reasonable to inquire how it is the complainants are able to support the specific aspect of their allegation concerning the offenders’ relation to the bar. Until recently, Muddles passage was very poorly lit. Areas with inadequate lighting are prone to anti-social behaviour, especially in Folkestone and we believe this is a better explanation for report SCSU-01 than is alleged. –licence conditions, own problems with intruders

“Crimes since October 2016”

A list of police crime reports in and by themselves, especially summarised in such succinct fashion runs the risk of misrepresenting actual events.

21/04/2017 (23:38hrs) - Crime reference ZY/15779/17 – Criminal Damage

Crime ZY/15779/17 for Criminal Damage was reported to the Police by the assistant bar manager. The criminal damage was to our air-conditioning units. A number of a group of individuals possessed false identification and on being refused entry by security supervisors, attempted to gain entry onto our premises through a subsidiary exit, thereby causing this damage. The remaining group of individuals who did not possess false identification and were granted entry proceeded to open the subsidiary exit to allow those who had been refused entry onto our premises.

This was acted on by management immediately, and the entire group was asked to leave. The accompanying photographic evidence shown to Police is attached. Note the time stamp of the CCTV image taken which was submitted to the Police in the top left corner.

An extract from our incident book is also provided.

23/07/2017 (02:15hrs) – Crime reference ZY/35564/17 – S4 Public Order

Crime ZY/35564/17 for S4 Public Order was reported to the Police by the assistant bar manager. An email of correspondence aiding the officer’s investigation is supplied. There also have been an occasions in 2017 when the assistant bar manager has asked that security supervisors ring the police when large group of potential patrons that have been denied entry for inappropriate attitudes congregate outside and refuse to vacate the public pavement, despite repeated warnings. The security supervisors, being better placed to witness activity than the bar managers and bartenders, have also co-operated with police to provide descriptions of the offenders involved, lest they move on to another venue. In the event situations like this arose, security supervisors would do this whilst tending to the bar’s responsibilities at the same time.

In light of the above, it is not right for these three crime reports to be used as evidence of the bar failing to promote this particular licensing objective. We would go further and add that it would be a perverse state of affairs for two reasons.

Firstly, it would dissuade licensed premises from ringing the Police for assistance in the event that graver situations arose, out of fear that records of (self)-reported crimes to Police would be

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used against them. Our ability to secure the safety of their patrons would be handicapped if the above evidence is determined by Council as Environmental Health allege.

In addition to this, as one licensed premises out of a network of night-time economy venues, we believe an important part of our working relationship with Kent Police on preventing crime and disorder is in the contribution of local intelligence on offenders each time there is crime and disorder. To cite a list of (self)-reported crimes in which we have co-operated, without listing or making any effort to show who made the reports,

contravenes the spirit of co-operation between licence holder and relevant authority which we believe the Licensing Act was drawn up with a view to.

We are unsure whether or not it is suitable for a local authority Environmental Health department to be dealing with matters of crime and disorder. We would be interested in hearing what Kent Police have to say on the matter.

“Calls to Police since Oct 2016” – link to E4

We provide relevant extracts from our incident-book, which logs refusals, ejections, disorderly conduct, permanent exclusions and illegal weapons/drugs confiscations. Where an extract is not provided, either the bar was not open, or there was nothing significant to report for that evening.

28/01/2017 (2355hrs) :: 28-1390 – Fighting at location

This was the one serious incident in 2017 where an off-duty security supervisor was assaulted by a group of young males whom had been refused entry and whom were told to move far away from the premises. The conflict was managed, the offenders ejected, and one male was arrested. The off-duty supervisor’s services was contracted for the duration of an hour or so while he gave evidence to Police along with the other security supervisor who was on-site. Remunerating him for his time was by no means necessary, but it was decided that it would aid the Police investigation.

We enclose an extract of our incident-book related to this incident

29/04/2017 (0220hrs) :: 29-0136 – Noise nuisance

A female was refused entry for having the wrong attitude. She became aggressive and her partner threatened the door-supervisor on duty with violence. The situation was diffused and she promptly left. This situation lasted 10 minutes.

We enclose an extract of our incident-book related to this incident

13/05/2017 (0039hrs) :: 13-0037 – Concern surrounding underage drinking at the venue

At 22:50, one of the door supervisors suspected an individual to be underage, from his own knowledge. He was asked to leave.

We enclose an extract of our incident book related to this incident.

At this stage, the only people who knew that this individual was underage and had been ejected were members of management and door supervisors. It would therefore not be unreasonable to inquire how it is knowledge of this incident came to be reflected in a call to the Police from a concerned member of the public, especially in light of what we present later on in this section.

25/06/2017 (0229hrs) :: 25-0204 – Noise nuisance

There were no events held that entire weekend. This is a poignant and representative example of public anti-social behaviour in Folkestone being attributed to the activities of our bar.

3 19/08/2017 (0113hrs) :: 19-0102 – Persons seen using drugs in toilet

Toilets are checked every half-hour. No persons were seen using drugs in the toilet, otherwise offenders would have been asked to leave and it would have been logged in the incident-book.

29/10/2017 (0100hrs) :: 29-0112 – Male has become aggressive in the premises towards informant. Informant had left the premises so no requirement for Police attendance.

Informant later refused to engage with Police.

10/12/2017 (0300hrs) :: 10-0156 – 2 males have been arguing outside the premises for approximately 30 mins after coming out of the club. Informant advises that the club should have closed at 2am but was still carrying on until 3am.

For these last complaints, our incident book does not have any records, implying that security supervisors were not aware of these incidents occurring. Did the informant not think to notify security supervisors?

The above complaints to the Police have to be read in light of the next section. We enclose posts from a Facebook group, named “Bank Bar Action Group”. We can draw the following conclusions from this group:-

□ Local residents who might not otherwise complain are being incited to complain by Zoe Bowden

- Local residents are both praised for making complaints, and encouraged to make them.
- Complaints are of a proactive nature, not reactive to incidents.
- Complaints are also being used as part of a wider political strategy to induce the Planning Authority to refuse what was then a variation of condition application.
- Encouraging complaints amounts to an effort to represent incidents as a public nuisance, rather than an isolated private nuisance

Our email is clearly listed on our Facebook page, we regularly receive messages about our opening hours and we uploaded a special mobile number of the DPS after the mediation meeting to act as a complaints hotline. Evidence of this is provided below. To date have no received no direct complaints to management from residents.

Public safety

“There have been no door staff witnessed by ERO on 30/09/17”

The door supervisor on duty that night was Nick Franks, SIA Licence number 0130110281666118, and he was on-site from 21:00 to 03:15. We have contacted him and he is prepared to give a witness statement should this matter go to the Magistrate’s Court.

We think it would be appropriate to inquire why it did not occur to the ERO to come and visit the premises to make the relevant inquiries, nor to inspect our sign-in sheets at the time of the event, rather than relying on inaccurate visual inspections from afar.

Our licence conditions were drafted to be realistic and to be flexible to variations in the nature of the bar business. For this reason, there is no stipulation of the number of door supervisors required on any particular day. Please see the attached premises licence, and the highlighted condition. The absence of a door supervisor in and by itself does not represent a breach of the conditions specified under Annex 2 of premises licence SHEP00687/17.

4 We believe that if there were genuine doubts as to the presence of door supervisors, the Licensing Authority would have conducted spot checks. In the entirety of 2016, 2017 and 2018, we have not received any scheduled visits from any of the Responsible Authorities.

“There have been a number of taxis associated with patrons of the Bank Bar blocking the public road...”

We do not believe that this is an issue of public safety.

We believe that this is the reason for there not being specification of conditions relating to this in Shepway District Council’s Licensing Policy 2016, nor of a specification of highway management as Responsible Authorities in Appendix A.

Prevention of public nuisance

We disagree with the position that we failed to promote this licensing objective and that “the warnings the council have issued to the licence holder are not being adhered to and all requirements are being ignored.”

We already have a Noise Management Plan as part of our Operational Plan submitted with our premises licence, and enclose it below.

We believe it is appropriate to give an account of the mediation meeting here, extracted from minutes written by the assistant bar manager immediately after the meeting. It is hoped that it will give provide context towards better understanding how we have done our utmost to promote this licensing objective, in spite of behaviour undermining the spirit of co-operation that should exist between a licensed premises and Environmental Health. We will list some of the general problems faced with regards to this licensing objective that arose in the meeting, for two categories of noise. That is interior noise leakage from amplified music sources, including low frequency noise; and exterior noise from patrons in the smoking area.

During entire period, points from the Operational plan, submitted with the licensing document, continue to be followed.

Interior noise leakage

This category of noise is covered by the last two points listed on the undated mediation letter reference SML/01, reproduced below:

- How long the doors remain open and to consider the use of a double door system to minimise the escape of noise
- The music sound levels

Since the application for an extension of the Bank Bar hours in 2016, we have long recognised the importance of setting appropriate music levels, and this is reflected in our repeated requests for technical guidelines.

Our reasons for requesting quantitative noise guidelines specified in objective, scientific measures were the following. Guidelines would allow for greater transparency and accountability in the management of noise, it would allow for a dialogue between licensed premises and Environmental Health that was based in scientific measurements rather than purely subjective assessments, and it would give us an enforceable standard with which to comply. This was requested with a view to the inclusion of said quantitative guideline in Annex 2 of our premises licence conditions.

5 Evidence of our requests are shown in the reference letter accompanying premises licence application and the subsequent letter sent on Monday 20th March 2017.

In addition, we requested these because it is our opinion that any credible document dealing with the issue of noise must be grounded in scientific measures, to eliminate subjectivity. This is a position supported by guidance documents on best practice issued by the Chartered Institute of Environmental Health, enclosed below. One of the recommendations in this guidance is at the very least, “for the maintenance and calibration of measurement and recording instruments”. We are also aware of many local authorities recommend licence conditions codified in terms of a quantitative guideline, namely Manchester Council, Islington Council and Dover District Council to name a few. We enclose the relevant documents showing this.

Our interactions with Environmental Health indicated that they were not in a position to issue nor to assist in setting a guideline level for music noise levels. This was because they believed that it was unnecessary.

Mr Atkins stated that Environmental Health’s refusal to give quantitative guidelines was because it did not account for “variations in noise sensitivity among complainants”, and because “under the Environmental Protection Act 1990, no measurements needed to be given in order to justify the presence of a statutory nuisance.” Whilst the former reason was not a position we were comfortable with, precisely because the idea of statutory nuisance is couched in the language of a “reasonable person”, we were happy to accept the latter position.

However, we do not believe that our acceptance of that latter position is incompatible with the idea that in order to achieve a genuine, long-term solution to the issue of music noise levels, a quantitative measure should be included in Annex 2 of our premises licence conditions. In this case, should there be a reported noise nuisance, an ERO could take measurements in complainants’ properties and relay them to us, and we could amend the calibrated levels in our sound system accordingly.

In the absence of guidelines, we instructed Old Barn Audio when the system was installed and calibrated, to program the sound system in accordance with guidance issued by DEFRA on Noise from Pubs and Clubs, so there was an absolute maximum volume limit of 95 dB(A) in the small dance area of the bar. The existence of an absolute volume limit was questioned by Mr Stephens in the mediation meeting.

Following the mediation meeting, and in line with what was asked of us, we instructed Able Acoustics Ltd in September 2017 to produce an acoustic report with a view to best reducing the noise from our premises.

We enclose this report. Note that the measurements taken in the small dance area with calibrated equipment show a value of 95.3 dB(A), corroborating the account we have consistently given over the duration of our interactions with Environmental Health. We also hope that this dissolves any doubts that were expressed in the mediation meeting on whether a volume limit had been programmed into our sound system.

With respect to the doors at the premises, there already exist two sets of doors at the main entrance to the Bank Bar on Castle Hill Avenue. There is already a self-closing mechanism on one of these doors. However, when patrons enter and exit, both doors will temporarily be open. The only means of prolonged music noise leakage is when doors are held open by patrons.

6 In accordance with our Operational Plan, security supervisors will always be briefed at the beginning of the night that patrons cannot be allowed to hold open the doors.

Generally, it is our policy to contract the services of at least one security supervisor each night we are open, depending on risk-assessed evaluations of how busy the night will be. The security supervisor with responsibility for manning these doors is usually stationed at the bottom of the stairs, at the entrance to the Bank Bar, unless he has gone to the toilet, at which point a member of staff will take his place.

We do not believe any of the evidence cited from SERO/01 to SERO/06 shows within balance of probability that security supervisors are not fulfilling their responsibilities.

There is no mention of patrons holding open the doors for prolonged period of greater than 30 seconds. Rather, it attributes noise nuisance and leakage to arising merely from patrons entering and exiting the venue. That is unfortunately not something we can adequately control, without barring all exit and entry from the venue.

Furthermore, in reports SERO/01 to SERO/06, there is no satisfactory explanation of how it is we are failing to adhere to our licencing conditions, nor of how failing to adhere to these licencing conditions have led to the purported nuisance.

We believe this problem is exacerbated by there not being standards of accountability for us in the form of quantitative guidelines.

During the meeting, one proposed idea was that the double doors be modified so that they could be opened independently of one another. The idea behind this was that it would lead to the creation of a sound corridor to trap noise. We expressed that we would have to assess the financial viability of such measures, as they were expected to be costly.

Exterior noise leakage

This category of noise is covered by the first two points listed on mediation letter, reference SML/01:

- Security staff and the management of people gathering outside
- The number of people using the smoking area and the amount of time they spend outside

Our current policy regarding this is reflected in our Operational Plan. Security supervisors enforce a limit on numbers of patrons in the smoking area. Normally this is between 15 and 20 people, but this depends on risk-assessed evaluations of the general nature of the clientele we receive. When patrons come outside to smoke, they are informed to be quiet and to respect the rights to a quiet life that our neighbours can reasonably expect. We operate a three strikes policy leading to exclusion for those who are deemed to be too loud in this area. Patrons are usually given around 10-15 minutes to smoke and those not smoking are asked to go back into the premises. Security staff have also been briefed that all patrons smoking must remain on our property and not congregate on the pavements. Therefore anyone who congregates on the pavement is understood to have left the premises, unless explicit permission has been sought from the security supervisors, such as getting cash from the cash machine at TESCO Express opposite. We have consulted archived CCTV records of the events in question and note that numbers in our smoking area, excluding any members of the public not on our property, do not correlate with the numbers reported by the ERO in SERO/02 and SERO/04. In particular, it remains to be clarified:-

- i) whether these were people waiting to be granted entry to the bar

- ii) whether or not they were refused entry or had decided to leave and been told to move on
- iii) whether they were our patrons

There must be a factual inaccuracy with report SERO/04 – on the weekend of the 23rd and 24th December, we were closed for business in line with the Christmas holidays. Perhaps it could be clarified what dates Environmental Health are referring to? Furthermore, reports SERO/01, SERO/03, SERO/05 and SERO/06 contain no reference to numbers in our smoking area exceeding ten people.

We believe it is reasonable to inquire what evidential tests are being used by Environmental Health to determine what constitutes “public nuisance”, and whether a genuinely causal link can be established between said public nuisance and the operation of our premises. In the past, Environmental Health have defined nuisance as “audibility from the nearest noise-sensitive premises”. There is a recent example of case law which states that this is so “vague as to be unenforceable”. It also seems that SERO/06 was a report conducted from the public highway, and not in a noise-sensitive property. Given that there are no quantitative assessments using measuring devices, we also feel it is reasonable to inquire what the baseline case for subjective assessment is. Essentially, this is a question about ambient noise levels. Is the general ambient noise level used to gauge nuisance one for a purely residential area without the presence of a bar, or an ambient noise level factoring in the presence of a bar? This is particularly relevant to SERO/06, in which it is mentioned that a bass beat is audible in the background. There is also a question which has emerged in recent case law of the distribution of noise complaints across complainant properties. Are the noise complaints isolated to a number of properties adjacent to the bar, and where does the locus of the complaints extend to? We believe it is important these questions are answered because they determine whether or not this is a private or public nuisance issue. The strategy of issuing a Noise Abatement Notice by Environmental Health would indicate that thus far, at most, this is a case of isolated private nuisance.

After our mediation meeting, we requested that Mr Flannery send the redacted reports to us so we could establish a time-profile of issues and better determine which source of noise was deemed most problematic. That was not provided.

We would also add that in none of the reports SERO/01 to SERO/06 does the ERO explicitly state that the noise witnessed is for a prolonged sustained period of a recurrent nature such that it would be detrimental to the enjoyment of one’s property. While there are references to there being loud noise, there is no professional assessment of whether or not it would constitute nuisance. Combined with the absence of quantitative measurements, the question reduces to “how loud is loud?” and “does your subjective perception of loudness correlate with the evidential tests for nuisance?” Such debates possess little scientific rigour and allow too much credence to ambiguities. While this might not be deemed an issue at a review hearing, it will take on a greater importance in event that this is appealed at the Magistrates’ Court.

In our opinion, this semantic game of qualifying subjective assessments could have been avoided opinion had Environmental Health given enforceable noise guidelines, at least for alleged interior music and bass leakage.

During the mediation meeting, we noted that the only case where disturbances from our smoking area arise is when there are incidents of disorderly behaviour, often when offenders are refused

8 entry to the bar. We believe our security supervisors have an excellent track record in diffusing and managing these tense situations, isolating offenders and ejecting them from the premises.

It can become difficult for our security supervisors to ask those who are not our patrons and those who have been refused entry to move on outside the boundary of our property, as we have no authority on the public pavement and highway. This has frequently been brought up by said groups as precisely why we cannot ask them to disperse. Our door supervisors also possess no immediate bargaining power to convince these groups of

people to move, as entering our premises is not something they would like. Furthermore, there is also the uncertainty of whether or not insurance would cover interventions to induce individuals to disperse on the public highway and pavement off the boundary of our property. Despite this, we asked that our security supervisors do their best to convince these groups of people to disperse anyway.

We stand by our position that while we can create as many constraints as possible to lead people towards particular patterns of behaviour that are acceptable to us and our community; we emphasise that our locus of regulation fails at the ability to control a particular individual's decision to engage in noisy or otherwise unacceptable behaviour.