

**REPORT:** Regulatory Committee

**DATE:** 26 July 2017

**REPORTING OFFICER:** Strategic Director Enterprise, Community and Resources

**PORTFOLIO:** Resources

**SUBJECT:** Application for the review of Premises Licence relating to Pop Planet 98 Victoria Road Widnes

**WARDS:** Riverside

## **1. PURPOSE OF REPORT**

To hold a hearing to consider an application for the review of Pop Planet 98 Victoria Road Widnes Premises Licence under Section 51 Licensing Act 2003.

Halton Borough Council's Environmental Health has applied for the review which relates to the Prevention of Public Nuisance licensing objectives.

- 2. RECOMMENDATION:** That the Committee considers the Section 51 application and make a determination on the application.

## **3. SUPPORTING INFORMATION**

- 3.1** An application has been made under section 51 Licensing Act 2003 ("the 2003 Act") to review the Premises Licence in relation to the above property.
- 3.2** This hearing is held in accordance with the 2003 Act and the Licensing Act 2003 (Hearings) Regulations 2005.
- 3.3** The procedure to be followed has been circulated to all parties and will be repeated at the beginning of the hearing.
- 3.4** The hearing is solely concerned with the Section 51 application.

## **4 THE APPLICATION**

- 4.1** An application for the review of the Premises Licence was received on 1 June 2017 from Halton Borough Council's Environmental Health department.
- 4.2** The Premises Licence holder and Designated Premises Supervisor is Michael Keegan
- 4.3** The review was requested by Environmental Health on the following grounds:-

The review is being called in respect of s4(2)(c) of the Licensing Act 2003, prevention of public nuisance. Evidence has been collected of noise from 98 Victoria Road, Widnes (known as The Volt/Pop Planet) causing nuisance in residential properties since January 2017. The music regularly continues through the night and can still be audible after 3am at weekends.

## **Additional Information**

### **Introduction**

The licence review is called in respect of a the premises known formerly as the Volt, and more recently as Pop Planet, situated at 98 Victoria Street, Widnes. The premises is located in a four storey building on the ground floor with flats on the three floors above. The premises currently holds a licence that permits the playing of recorded music until 3:15 am. Since January this year Halton Borough Council's Environmental Health Team has received a number of complaints from residents in the flats. Recordings made by the Council demonstrate that music, and in particular bass, is clearly audible in the flats above the premises until after 3am on Friday, Saturday and Sunday nights. This supported residents assertions that they were unable to get a full night's sleep at weekends.

### **Supporting Actions**

On 10<sup>th</sup> March 2017 Mr Keegan took over as the new Premises Licence Holder (PLH). The residents' complaints continued, and on 14th March 2017 a S80 notice under the Environmental Protection Act 1990 was served on the club requiring that the noise nuisance was stopped. Following the service of the notice the recipient has 21 days to appeal the facts of the notice if they feel it has be wrongly served. On 24th March 2017 Mr Keegan was advised that they should seek professional advice from an acoustic consultant to prevent the nuisance from the premises.

Between 16th March 2017 and 27th March 2017 a number of closure orders were served on the premises, as a measure to give residents some reprieve from the noise nuisance. These were followed up with applications to the Court for Closure Orders. The Closure Orders were not made, but Mr Keegan's representative gave several undertakings to the Court and the Council, on his behalf, to be completed before 27th April 2017. The undertakings were:

- A noise report would be commissioned from an acoustic consultant
- A draft of the report would be shared with the Environmental Health Team
- That the recommendations within the report would be implemented.

In addition Mr Keegan's representative said that they would change the name of the premises to Pop Planet and change the nature of the club such that

they would play less bass-reliant music, in particular they cited music from the 1980s and 1990s.

Mr Keegan complied with the first of the undertakings in commissioning a noise report. However it was provided to the Council on 27th April 2017, rather than before, and it was not a draft version, as had been agreed and neither of the recommendations had been implemented.

The 2 recommendations made by the report were:

- To remove speakers from the wall such that they are free from the structure of the building or if this not possible to replace the existing speaker mounts with resilient speaker clips.
- To install a noise limiter. It was recommended that this should reduce noise levels to no more than 90dB, but acknowledged that the level may need to be further reduced to prevent disturbance to residents.

Whilst the Environmental Health Team was in agreement that the conclusions of the report would have some impact on noise it was thought that it did not adequately investigate or address the transmission of the noise through the structure.

On 10th May 2017 staff from the Environmental Health Team visited the premises to assess compliance with the noise report. Whilst 2 speakers had been moved, they were still wall mounted and were not on the resilient speaker clips recommended. The noise limiter had not been installed. Mr Keegan was also offered further recommendations from the Officers, including undertaking further investigations into the structure of the building to better understand the means by which the noise was travelling through the building, and identify means of controlling the transfer.

On 19th May a letter was sent from the Environmental Health Department advising of our findings on the 10th May and giving the Mr Keegan a further 7 days to remedy the noise problem. Mr Keegan called the Council on 26<sup>th</sup> May to state that he had received the letter and had carried out some work although it was not clear whether this was totally in line with the recommendations given.

On 30th May we received a complaint from new resident in the building and on the 31st May other residents confirmed that whilst there had been some improvement in the volume the noise had still caused sleep disturbance.

### **Closing Comments**

The review is not being sought for trivial reasons, but because there has been persistent and severe noise disturbance to residents at weekends over 5 months. All complainants have openly acknowledged that they live above a nightclub and some disturbance is to be expected however they are not willing to live with the level of sleep deprivation they have experienced because of the volume and duration of the noise. One family has made the decision that

they can no longer live in the flat and are moving to a new home. Other residents have been affected at work by the lack of sleep and talk about having to catch up on sleep during other times of the day.

All the action taken by the Council has been based on independent evidence collected using a type I sound level meter and sound recording device, operated and calibrated in accordance with instructions. This has corroborated the reports that we have had from residents regarding the volume and duration of the noise nuisance. Throughout the process Environmental Health Staff have tried to engage with the Mr Keegan, however until more recently there has been barely any cooperation.

The current licence requires that 'all regulated entertainment should be inaudible to residential property within the vicinity of the premises'. Reports from residents and the evidence collected by Environmental Health demonstrates that this is regularly breached. In reviewing the licence we are asking that the Licensing Committee do not permit regulated entertainment taking place after 23.00 hours

## **5.0 THE PREMISES LICENCE**

**5.1** The premises licence allows the following licensable activities

### **Exhibition of Films**

Monday and Tuesday	08.00 to 00.15
Wednesday	08.00 to 02.15
Thursday	08.00 to 03.15
Friday and Saturday	08.00 to 03.45
Sunday	08.00 to 03.15

### **Indoor Sporting Events**

Monday to Sunday	08.00 to 01.00
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### **Performance of Live Music**

Monday to Sunday	23.00 to 00.30
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### **Playing of Recorded Music**

Monday and Tuesday	23.00 to 00.15
Wednesday	23.00 to 02.15
Thursday	23.00 to 03.15
Friday and Saturday	23.00 to 03.45
Sunday	23.00 to 03.15

### **Entertainment similar to live music and recorded music**

Monday, Tuesday & Wed	08.00 to 00.15
Thursday	08.00 to 03.15

Friday and Saturday	08.00 to 03.45
Sunday	08.00 to 03.15

### **Late Night Refreshment**

Monday and Tuesday	23.00 to 00.30
Wednesday	23.00 to 02.30
Thursday	23.00 to 03.30
Friday and Saturday	23.00 to 04.00
Sunday	23.00 to 03.30

### **The Sale of Alcohol on and off the premises**

Monday and Tuesday	10.00 to Midnight
Wednesday	10.00 to 02.00
Thursday	10.00 to 03.00
Friday, Saturday & Sun	10.00 to 03.30

### **Hours the premises are open to the public**

Monday and Tuesday	08.00 to 00.30
Wednesday	08.00 to 02.30
Thursday	08.00 to 03.30
Friday, Saturday & Sun	08.00 to 04.00

## **6 REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES**

No representations were made from any other responsible authority in response to the review application

## **7 REPRESENTATIONS RECEIVED FROM OTHER PERSONS**

No representations were made from interested parties in response to the review application.

## **8 OPTIONS AVAILABLE TO THE COMMITTEE**

**8.1** Section 52 of the Licensing Act 2003 states that the Council must, having regard to the application and any relevant representations, take such of the following steps (if any) as it considers necessary for the promotion of the Licensing Objectives.

**8.2** The steps which are relevant to this type of application

- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the Designated Premises Supervisor
- To suspend the licence for a period not exceeding 3 months
- To revoke the licence.

Note that the above reference to modifying conditions includes any alteration, omission or the addition of any new condition.

**9 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
Application Documents	Legal Services	John Tully/Kay Cleary