

**Cherwell District Council
Safer Communities and Community Development
Anti-social Behaviour Units Licensing Consultation Response.**

**Licensing Act 2003: Application for a review of a premises license.
Applicant(s): Barclay House Residents Company Ltd c/o Common Ground Estate
& Property Management Ltd
Sandford Gate East Point Business Park Oxford OX4 6LB**

Premises:

Moko Bar and Kitchen 16 Broad Street Banbury Oxon.

Details of the application:

The applicants are seeking a review of the Premises License current held in respect of the Moko Bar and Kitchen on grounds of public nuisance citing excessive noise and the nuisance caused by smokers as their principal grounds.

History:

This submission is made on by Cherwell District Councils' Anti Social Behaviour Team performing its role of Responsible Authority for Public Nuisance.

To put these comments into context it may assist the Licensing Sub Committee to briefly describe the situation of the premises that are the subject of this review and set out the history of the use of the premises.

The Moko Bar and Kitchen is located in Broad Street Banbury, an area which in land use planning terms can be described as commercial. The bar occupies the ground floor of the three story building with the first and second floors being six self contained flats.

When the Licensing Act 2003 came into force the premises operated under the name Rylands. When the application to convert the Liquor and Public Entertainment Licenses to a Premises License was made in 2006 a member of the Councils' then Environmental Protection Team commented that as a result of noise complaints received from the residents of Barclay House a sound limiting device had been installed at the premises and restrictions had been placed on the number of occasions when live music could be played within the premises.

In August 2007 the Premises License was transferred to a company known as Snap Inns Ltd. Who continued to trade as Rylands. In 2008 the Premises License was again transferred this time to a company known as ABC Midland Ltd. In October of that year there was a further transfer of the premises license to a Mr Hyseni. The premises continued to operate under this ownership until June 2010 when the license transferred to the Technobar Pub Company. The Premises License was transferred to its present holders' The Oxford Pub and Leisure Company Ltd in February 2011.

The Councils' Anti Social Behaviour Team received the first complaint alleging excessive noise from the premises on 03/02/11 when one of the occupants of the flats above the premises made an out of hours report to the Council. A visit to this customers' property was made on 04/03/11 and a subjective assessment of the level of noise within the flat was made. A further call was received the following evening at 22:00 hrs. A further site visit was made and the level of music noise was judged to be excessive.

A visit was also made to the bar that evening and a conversation took place between Mr Carter, the Managing Director of The Oxford Pub and Leisure Company Ltd. and myself. I advised him that we had received noise complaints that in our view were justified and after some debate as to the source of the noise we agreed to meet at his premises on to discuss the problem further.

This meeting took place on 08/02/11 and Mr Carter agreed to isolate the floor mounted bass speakers from the floor of the bar in an effort to reduce the transmission of sound through the structure of the building. I also discussed with Mr Carter other means of sound control. Our meeting concluded with us agreeing to meet again at the premises on 11/02/11 to assess progress. At this meeting I was introduced to Mr Christopher Proudfoot. I was told he was Mr Carter's business associate. Isolation mounts had been placed between the floor mounted bass speakers as agreed. I also visited one of the first floor flats above the bar with Mr Carter. The music noise level heard at this time was considered acceptable.

We received no further complaints until 25/02/11 and 26/02/11. On the latter occasion an officer attended the customers' premises at 23:10 hrs. Excessively loud music was heard but subsequent enquiries at the bar indicated that they were closing shortly.

We continued to receive regular complaints of excessive noise from residents of both first and second floors of Barclay House. Having heard noise that was judged to be excessive in one of the second floor flats an attended noise monitoring exercise was carried out on 26/03/11 from one of the first floor flats in Barclay House. An officer arrived at the premises at 22:00 hrs and remained until the music noise from the bar ceased at 00:20 hrs. During this period of observation the music noise level was assessed both subjectively and objectively. Sound level measurements were made every 15 minutes. The average noise level during the period of observation was Laeq (15 min) 50 dB with the maximum level being 56 Db. A further measurement was made once the music noise had stopped. This was Laeq(15 mins) 28 dB.

During the officers observation it was possible to hear the music being played in the bar at a level where individual tracks could be identified. Bass music noise was dominant and vibration could be felt in the walls and floor of the flat.

On the basis of these observations the level of music that could be heard within the flat was judged to constitute a statutory noise nuisance under the Environmental Protection Act 1990.

Two noise abatement notices were drafted. The first was sent by post to The Oxford Pub and Leisure Company Ltd at their Registered Office address, Suite 1 2 Botley Road Oxford OX2 0AB. The notice was sent by recorded delivery on 07/04/11. The documents were returned to the Council by the Post Office endorsed 'Address inaccessible'. A copy of the noise abatement notice was also served on Mr Christopher Proudfoot who was now the Designated Premises Supervisor (DPS) of the premises. The notice was sent to the home address he had given in his Transfer Application, The Old School Gloucester Green Oxford OX1 2DA. This notice was returned to the Council by the Post Office endorsed ' Addressee gone way. Addressee unknown'.

Further copies of the noise abatement notices addressed to The Company Secretary, The Oxford Pub and Leisure Company Ltd and Mr Proudfoot c/o Moko Bar and Kitchen

16 Broad Street Banbury Oxon. The covering letter that went with the abatement notices requested confirmation in writing of the addresses of both the company's registered office and Mr Proudfoot. To date no response has been received.

I have heard verbally from the Councils' Licensing Department that the company's registered office has changed and that a change of DPS is in progress. Once these details have been confirmed further copies of the abatement notices will be sent to the appropriate addresses.

We continue to receive noise complaints from residents of the both floors of Barclay House and will seek to enforce the noise abatement notice(s) once clarification of the identity and address of the DPS and the address of the Premises License holders Registered Office has been clarified.

I have no submission to make in respect of the alleged nuisance from smoking by the bars' customers as this activity is controlled by separate legislation through the Responsible Authority for Public Safety, the councils Public Protection Department.

Recommendation:

We would submit that on the basis that noise from the premises is causing both statutory and public noise nuisances that the Premises License should be varied as follows:

No amplified sound shall be produced within the premises after 23:00 hrs or before 08:00 hrs on any day.

Notwithstanding the above recommendation that the level of sound within the premises be controlled using a sound limiting device calibrated such that it does not allow amplified sound to be produced at a level that would materially interfere with the enjoyment of nearby dwellings.

The permission allowing the performance of live music within the premises be withdrawn

Rob Lowther
Anti Social Behaviour Manager
10/05/11

A copy of this report is sent to the applicant(s) or their agents and to the Licensing Authority for the Cherwell District Council Area. Should you wish to discuss the contents of this report and its recommendations please contact Rob Lowther on 01295 221623 or rob.lowther@cherwell-dc.gov.uk.

PLEASE CONFIRM IN WRITING THAT YOU HAVE RECEIVED THIS DOCUMENT, THAT YOU AGREE THE RECOMMENDED CONDITIONS OR THAT YOU INTEND TO CHALLENGE THE RESPONSIBLE AUTHORITIES RECOMMENDATION

Correspondence must be addressed to Safer Communities, Urban & Rural, The Licensing Authority, Cherwell District Council, Bodicote House, Bodicote Banbury OX15 4AA