

Premise Licensing Review

Ardview Inn Noise Complaint Statement by Andy McClements EHO Argyll & Bute Council

Nature of the complaint

On the 29/8/2022 the Environmental Health Department received a complaint at 10:32 from Dr. P.J McGrann, Ardview House, 67 Frederick Crescent, Port Ellen Isle of Islay, PA42 concerning Ardview Inn, 67 Fredrick Crescent, Port Ellen, PA42 7 BD, *"I wish to report two incidents involving premises - Raucous, offensive noise and behaviour outside last evening 26th August until midnight. My household including 5 children under 11 years who were on holiday visiting were distressed, intimidated by noise and lewd language. Noise nuisance from music occurring within 2:30 hrs and transmitted to my house waking my household."*

On the 7/09/2022 the Environmental Health Department received a complaint at 16:12 from Dr. P.J McGrann. Ardview House, 67 Frederick Crescent, Port Ellen Isle Of Islay, PA42 7BD concerning Ardview Inn, 67 Fredrick Crescent, Port Ellen, PA42 7 BD, *"Disturbing noise coming from the premises especially in the evenings until 1am. Going on for a few month now. Can you please call customer back to discuss. Customer is registered severely deaf and can still hear noise and sound proofing done professionally to his property."*

On the 8/09/2022 Mr Andy McClements (Environmental Health Office – Argyll & Bute Council) spoke to Dr. Pat McGrann regarding the noise complaint explaining that to deal with the complaint a noise nuisance log would need to be completed and that the investigation could take 6 months or more. That various matters which may constitute a statutory nuisance are set down in section 79 of the Environmental Protection Act 1990. If the evidence obtained shows a statutory nuisance exists or is likely to recur, then the nuisance diary will be used to support any action taken by this Department. It is, therefore, essential that the information which is recorded is accurate and written at the time of the noise or shortly afterwards. Mr McClements also stated he would be contacting Ardview Inn and explain to the manager that a noise complaint has been logged against them and that it will be investigated.

Dr. McGrann also stated in an email *"as a result of ringing 101 on the evening 25.09.22 the local Police Sergeant and PC visited my house at 23.35 hrs and clearly recognised excessive noise of music. "How often do you have to put up with this"? They immediately visited the Inn and requested the music be reduced. It remained quiet and comfortable until 00.20hrs. I presume they duly made a report."*

On the 24/10/2022 Mr. McGrann emailed a new concern stated as follows *"I report a new and recent noise nuisance emanating from within the Ardview Inn which is disturbing my household. We returned to Islay the evening of 18.10.22 and noted a recurring sporadic door clattering [by which I mean sound and vibration] emanating from within the Ardview Inn throughout the opening hours."*

Dr. McGrann also complained about *"The high pitched hand dryer in the female toilets which I have mentioned in my log continues to resound throughout the opening hours and later as cleaners tidy up in the early hours."*

Ardview Inn, 67 Fredrick Crescent, Port Ellen, PA42 7 BD

Both the licensee, Mr Archie McArthur and the premises manager, Angela Small (Designated Premise Supervisor - A designated premises supervisor is the person who has day-to-day responsibility for the running of the business and is responsible for authorising the alcohol sale) were made aware of the noise complaint on the 9 September 2022. A scheduled visit to the complaint and complaineo on Thursday 30 September was cancelled due to adverse weather conditions. A rescheduled visit was undertaken on the 18th January 2023 with Angela Smith, Manager Ardview Inn, 67 Fredrick Crescent, Port Ellen, PA42 7BD. The complaint was not available as Mr. McGrann was off island. The manager of Ardview Inn Angela Smith demonstrated the operation of the Jukebox and reiterated her actions stated in the email dated 12 September 2022 following complaints from Dr. McGrann regarding noise from the juke box. Please refer to the email dated 12 September 2022 from Angela Smith below:

"Good afternoon Andy

Thank you I have received the link for future serving of food and will be in touch about this is due course. as discussed we are not serving food at present.

Regarding our conversation via telephone on Friday 9th September 2022, as requested I'm reiterating a few facts discussed regarding our juke box music and general operation of the premises.

Prior to opening Mr Archie McArthur, director of Eilean Properties Ltd, the premises owner engaged with Mr Pat McGrann regarding the operating procedures of the Ardview Inn.

Mr McGrann asked due to noise levels received in the past with previous operators, would we consider soundproofing when redecorating, Mr McArthur agreed to this, at his own cost, also offering identical works or Mr McGrann at cost price which he refused.

The director has vast experience with licenced premises within Argyll and Bute and from day one made it very clear when the Ardview Inn reopened there would be a zero tolerance approach. Mr McGrann was shown, on various visits to the property, pre reopening the signage used in other premises that show Challenge 25, respecting neighbours, no leaving the premises with drinks, etc. During these conversation it was agreed that the music in the the lounge area (adjacent to Pats house) would be a reduced volume by 11pm as a matter of courtesy should it prove to be an issue and it was made clear we are licenced til 1am, seven days a week.

From opening this is what I put into regular practice, I did forget on a few occasions however rectified immediately when Mr McGrann himself has popped in asking me to turn it down. This was at 11.10pm or thereabouts on each occasion.

Mr McGrann has told me when chatting on the street when I've been arriving at work that he can't hear anything from the pub at night as he also has triple glazing, however his wife is more sensitive to sound.

On Saturday 27th August a complaint was made re loud music and noise from the previous evening. Police had in fact driven past The Ardview several times that evening - witnessing not many people outside smoking, no one with glasses, and on the last spin by at 12.45am the Ardview was in fact locked up and staff away home. No one at all outside. The noise was travelling from another establishment as they had a live band playing - further noise was people singing on their way home.

On the evening of Saturday 27th August, Mr McGrann came in and requested I put the music off in the lounge. On this occasion I walked with him to the lounge area informing him I could not do that as

there was no music on at all. The juke box in fact was not being used at that time, Pat then left the premises.

On Friday 2nd September Mr McGrann installed his own soundproofing at his property. On completion, the install team requested the staff of The Ardvie Inn put the juke box volume up full and switch on the hand dryers to enable them to return to Mr McGrann's premises to carry out a sound test. The install team and Mr McGrann agreed the sound proofing had been a success and couldn't hear anything. The juke box is never used at full volume.

On Tuesday 6th September Pat arrived on the premises at 10.40pm requesting the music be turned down, again I went into the lounge area so he could witness it was in fact at a very low volume and we could actually have a conversation no problem, he said that no he couldn't actually hear me talking as he is quite deaf, it's the beat of the music that is the problem now and he also fears the soundproofing has not been efficiently installed. On this occasion I had the low music tuned off completely in the lounge and informed Mr McGrann that he was barred from entering the premises in future as we now feel he is being a disruptive influence not only to staff but also customers, also taking into consideration, from day one he was given phone numbers and email addresses of the directors to contact them directly should he have and concerns they could assist with, since opening, there has been no direct contact. The barring of Mr McGrann was not a refusal to discuss any issues he may have but to encourage for record that all discussion should be carried out by email on a formal basis. He called the police the following day with another noise complaint informing the Police he was now barred from the premises and asking how he should make contact to discuss the matter.

As a matter of "good housekeeping", our daily cleaner has been asked to remove any litter, including cigarette ends that have not been placed in the external boxes provided from the front of the premises in parallel with the Argyll and Bute street sweeper. Pat was taking photos of the outside area yesterday morning before the cleaner arrived for her shift. He will have evidence of cigarette butts as sadly not everyone uses the cigarette bins and also 2 squashed alcoholic drink cans - neither of them sold on our premises.

Our frontage is always kept tidy, cigarette butts swept up every morning and throughout the day as required. I'm assuming complaints in this area will also be directed to environmental health?

Mr McArthur on a recent visit to The Ardvie with the sole purpose of addressing any allegations being made, spoke to a customer who arrived by taxi from the Bowmore area holding a branded beer glass of a product we do not stock, he was asked to place it in the glass bin before entering the premises, which he rejected and left the area. The following morning the glass was on a window sill 50 yards from the premises, unfortunately, a comment was made that this was by a patron on the premises after closing time. Photographic evidence of this is available.

Although Mr McGrann has stated the issue with noise is only since the recent reopening of the premises, we have discussed the matter with the two previous operators who could confirm he has in fact complained for many years including even having an issue with the noise of pool balls dropping in to the pockets of the pool table, I assume these previous complaints will be recorded.

On the various Police visits to the premises, due to neighbour complaints, both the licencing board and Police Scotland are satisfied with the standard and professionalism of the operation with all necessary procedures being in place.

We have had discussion with other neighbours who run holiday let businesses adjacent to the premises who are delighted the community model we have adopted, they feel it is an asset to Port Ellen and have no issue or complaint themselves or by their customers.

Could we also bring to your attention that Mr McGrann attended a zoom meeting with the community council and informed myself that he had raised a formal complaint at the meeting with the backing of councillor Dougie McFadzean who stated, confirmed by the recently released minutes of the meeting online that he had discussed the matter with management, to date I still await this discussion. Mr McFadzean's only visit to the premises was to have a couple of pints and subsequently leave a five star review online stating it was "a fantastic renovation and a great little pub."

Wendy Maginnis, Sergeant, Bowmore Police Station, Isle of Islay stated in an email dated 21 January 2023 "I believe Angela has done all she can to try and mitigate the noise emanating from the building, the front door has been fully repaired with soft closures etc, there are paper towels in the ladies as an alternative for customers to reduce the use of the hand dryers, it is my understanding the speaker on that side of the building has been switched off."

The Jukebox and sound system

The Juke Box (ICON Lite – 10199_UK NSM MUSIC Ltd) and associated speakers which are managed and operated by Sims Leisure who installed the system. The Juke Box has 4 zones: Zone 1 is the speaker (just by the Ladies toilet door) in the lounge area, Zone 2 is at the corner of the bar close to the Jukebox, Zones 3 and 4 at the back area near the fire place have only one speaker.

Ardview Inn & Ardview House – noise investigation site visit – 28 February 2023 14.00pm by Nicole Hamilton EHO and Andy McClements EHO

Nicole Hamilton stayed with Angela Small (Manager) at Ardview Inn whilst Andy McClements went to Ardview House where Dr P. McGrann & Mrs P. McGrann reside. It was noted that the Hand dryers were still to be fitted with rubber washers. The juke box was played on full volume with all speakers on at 14:20pm. Andy McClements clearly heard "Guns & Roses song – Knockin' On Heaven's Door - Mama put my guns in the ground, I can't shoot them anymore" whilst standing in the bedroom with Dr P. McGrann & Mrs P. McGrann. At 14.25pm Andy McClements phoned Nicole Hamilton to ask for the volume of the Juke Box to be turned down to its normal setting. At 14.29pm this was the case and no music was heard. Dr P. McGrann & Mrs P. McGrann both stated this was not how it normally was as they could usually still hear the music. At 14.30pm the juke box was turned off. At 14.33pm the hand dryer in the ladies toilet was turned on. Andy McClements could clearly hear the hand dryers in the bedroom, a high pitched whirring noise.

At approximately 14.35pm Andy McClements entered Ardview Inn with Dr P. McGrann and Nicole Hamilton accompanied by Dr P. McGrann left Ardview Inn and next door to Ardview House. Nicole Hamilton and Dr P. McGrann then went to the complainant's bedroom. The juke box was played on full volume with all speakers on at 14:39pm. Nicole Hamilton clearly heard "Guns & Roses song – Knockin' On Heaven's Door" whilst standing in the bedroom with Dr P. McGrann. At 14.41pm the volume of the Juke Box was turned down to its normal setting. No music was heard by Nicole Hamilton. Dr P. McGrann stated that "this is not usually normal setting." Andy McClements advised by phone that the juke box was turned off at 14.44pm. Nicole Hamilton stated that the Gents hand dryers at 14.46 pm could be heard in the bedroom. At 14.47pm the Women's Hand dryer was turned on and could be heard but not as clearly as the Gents hand dryer. Nicole Hamilton returned to Ardview Inn.

The loudness of the Hand dryers in the Gentlemen's Toilets and Ladies Toilets was discussed with Angela Small before both Andy McClements and Nicole Hamilton left the premises at approximately 14.55pm.

On the 18 March 2023 Angela Small notified Andy McClements by email that "I've had the shock absorbers fitted..." to the toilet hand dryers.

On the 18 July 2023 Angela Small notified Andy McClements by email that Ardview Inn would be purchasing quieter hand dryers for the Ladies toilets and Disabled toilet.
<https://www.washroomhub.co.uk/heavy-duty-nozzle-hand-dryer>

<https://www.washroomhub.co.uk/hand-dryers/quiet-hand-dryers>

Conclusion

No Statutory Nuisance was witnessed at the time of the visit on the 28 February 2023 between 14.00pm and 14.50pm regarding the use of the Juke box when played under normal settings both witnessed by Nicole Hamilton EHO and Andy McClements EHO. The use of the hand dryers in the Gentleman's and Ladies Toilets could be heard and this was discussed with Angela Small who stated that rubber washers were to be fitted to all hand dryers and also that patrons would be asked to use the provided hand paper towels. These measures have proved to be inadequate as Dr P. McGrann & Mrs P. McGrann are still experiencing the hand dryer's high pitched noise when in use. The Licensee Mr Archie McArthur has made enquiries about installing quieter Hand dryers. These have now been sourced and will be installed in the Ladies and the Disabled toilet in due course. Once the installation of the quieter hand dryers in the Ladies toilets and Disabled toilet has been completed. A visit will be made to Ardview Inn, 67 Fredrick Crescent, Port Ellen, PA42 7 BD, to determine if this mitigation measure has been effective with regard to the hand dryers high pitch noise experienced by Dr P. McGrann & Mrs P. McGrann when in use.

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Updated 7th November 2023

As stated above, the email sent by Angela Smith the Manager at the Ardview Inn on the 18th July 2023 outlined that quieter hand dryers would be purchased and installed. It was confirmed that on Sunday 19th September 2023 that quieter hand dryers, the Blue Dry Junior Hand Dryer which generates 60dB when in use were installed in the ladies and disabled toilet cubicles. Patrons would be asked to use the provided hand paper towels in the first instance.

An unannounced visit will be undertaken by the Environmental Health service sometime in November or December 2023 subject to an event (Live music night, Quiz night) taking place. However, if a suitable event cannot be identified then it might be the case that a noise level meter in a tamper proof box is positioned in the living room or bedroom of the complainants house to record the level of noise they experience over a two week period.