



Select Committee on the Licensing Act 2003

Oral evidence: The Licensing Act 2003

Tuesday 11 October 2016

11.30 am

[Watch the meeting](#)

Members present: Baroness McIntosh of Pickering (The Chairman); Lord Blair of Boughton; Lord Brooke of Alverthorpe; Lord Foster of Bath; Baroness Goudie; Baroness Greender; Baroness Henig; Lord Mancroft; Lord Smith of Hindhead; and Baroness Watkins of Tavistock.

Evidence Session No. 7

Heard in Public

Questions 70 - 77

Witnesses

I: Dr Alan Shrank, Chairman, National Organisation of Residents Associations, Councillor Carol Davies, National Organisation of Residents Associations, Richard Brown, Licensing Solicitor, Westminster Citizens Advice, and Patricia Thomas, Chair, Harmood, Clarence, Hartland Residents Association.

Examination of witnesses

Dr Alan Shrank, Councillor Carol Davies, Richard Brown, and Patricia Thomas.

Q70 The Chairman: Good morning; I welcome you most warmly. Thank you very much indeed for contributing to our inquiry and coming today to give evidence to us. The session is open to the public. It is broadcast live and will subsequently be accessible via the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. It would be extremely helpful if you could advise us of any corrections as soon as possible after you have received the transcript. If there is anything after the evidence session that you would like to clarify, or you would like to amplify any points made during the evidence session or make any additional points, you are welcome to submit supplementary evidence to us.

Before we proceed to questions I declare my interests in the subject, as I am required to do. I have a shareholding in Diageo. I am the honorary President of Pickering Conservative Club. I am also a member of the Beer and Wine and Spirits All-Party Groups and, obviously, have received hospitality in that role.

Perhaps I may introduce the first topic. It is becoming clear to the Committee that there is a tension between those who wish to drink alcohol and residents who live near licensed premises. If you feel the correct balance is not being struck, where do you believe the fault lies, and what can be done about it? Is there a proper balance at the moment? If you believe there is not a proper balance, how could that balance be better reached?

Dr Shrank: I think it starts with the problems with applications that are registered and then dealt with unsatisfactorily from the point of view of residents. We see the Licensing Act as having dealt a raw deal to residents when it comes to making decisions on where and what premises should be licensed. There is a general impression from our members that there is a presumption of approval by licensing committees in granting the applications as they stand. This is apparent when you consider how many licensing applications there are in a year. Some data from 2014 revealed that there are nearly 15,000 such licence applications in England and Wales and, of those, 444 were refused and the others have been accepted. It supports our view that licences are awarded in spite of concerns from residents.

According to the same collection of data, there were about 3,500 hearings, whereas you would have thought there would be many more than that. The problem that our members report with hearings is that they conclude that there is this presumption of approval, and there are three factors to that. The first is that—I am talking about hearings—when you have an application for a new licence in a residential area, the residents express their concerns at some length in their evidence, but they have no hard evidence. My experience supports the view that what

happens is that the legal adviser tells the licensing councillors that it is all prediction, not hard evidence, and therefore it has no weight.

The Chairman: Could I put a direct question to Councillor Davies? You are deputy chairman of the Planning and Licensing Committee at Loughton Town Council, where I canvassed in my youth. A clear strand we are picking up is that residents feel that their views are not being heard and that planning is almost taking precedence over licensing and, where there are existing nightclubs, they are seeing housing put in in the form of flats, and that poses problems. How do you see it from an elected councillor's point of view?

Councillor Davies: The views of residents are not being taken into account at all. I can speak for Loughton, but I think it will be a trend across the country. Planning does not take precedence as far as licensing goes. We are a town council committee—we give a steer and guidance and then our recommendations go to the district planning and licensing committee and then further on. We try to restrict hours of opening on planning applications. We are local: we know where the road is, where the houses are, where the residents are; and if we have no objectors at the meeting, we will have a really good idea that these hours should not go beyond a certain time. Then, lo and behold, the absolute opposite happens: there will be a licensing application which will override what we put on our planning recommendation and it goes from there. That is the case, is it not?

The Chairman: I turn to Lord Mancroft, who will pursue this a little further.

Lord Mancroft: There are always going to be competing interests between business and residential, and that is going to grow ever closer in towns and cities over the next few years. An example of competition may be a grassroots live music venue and a new block of residential flats. When striking the balance between those competing interests—and it may not be those two but other competing interests—does it matter which use was there first?

Councillor Davies: Yes.

Lord Mancroft: If it does, how should those competing be made to recognise the existing use? How do you do that?

Councillor Davies: If you have a music venue that is there—it is established; it has a clientele and is used—then that is one thing. If you have a developer who will come to put a block of flats there or develop housing around it, that needs to be taken into account. The music venue is already there and they have established their right to be there.

Lord Mancroft: How do you take that into account?

Councillor Davies: When the developer comes along, if they want to build housing there, on top, they need to take into account the noise reduction when the building is built. That has happened—

Lord Mancroft: How does that help the residents who are going to live there after the developer has gone?

Councillor Davies: They know full well where they are moving to. They are not moving to a rural place. If they are moving there, then they are expecting that it will be a busy or noisy area, but you would take that into account and expect that. If I were going to buy a property and I see there is an established music venue, I would be looking at whether my windows are going to stop the noise coming in, or I would not be buying it. That is a completely different thing. What is happening the other way is that you are living in a quiet street, you have a local pub and a normal evening use of it—regular hours, restaurants, that is fine; people go home and go to sleep—but, on the other hand, and completely out of proportion, you have pubs turning themselves into bars and nightclubs and asking for 3 am licences, which are being approved. What was an evening economy is turning into a night-time economy. Then you will have all the comings and goings, and other businesses want to open because there is a nightclub there; so you will have a takeaway place which has to have a 3.30 am licence, and that is given. It is completely in favour of the applicant at the moment and things are passed without any regard for the local community.

Dr Shrank: The residents spend a lot of time trying to get the planning conditions appropriate for any development that is taking place in their area, and the hours are sometimes fixed on those premises by planning. If it is a licensed venue, they then seek extra hours which are beyond those of the planning conditions, and it seems absolutely crazy. There is one situation where there are three regimes—the planning, the licensing and highways if pavement use involved—and they all have different remits and could offer totally different conditions. We understand that planning is paramount, but it does not stop these other bodies from making different conditions, and then there is a battle to try and change the planning. I have seen that happen in my own area in several instances where they put pressure on planning to lower the standards. They have a remit to protect the amenity and quality of life of the people in the area and they are pushed to change that remit so that they do not, in fact, stop the licensed premises from operating hours later.

Lord Mancroft: Mr Brown and Ms Thomas, do you have any evidence of the amount that is happening, the quantity of it? Secondly, carrying on from what Dr Shrank said, is there any co-ordination between highways, planning and licensing as a routine, or do they not co-ordinate their decisions at all?

Patricia Thomas: My impression is that they do not co-ordinate. Certainly I have seen no evidence that they do. One other point I wanted to make to strengthen what Carol Davies was saying is that when the developer comes along and builds a block of flats, it is true up to a point that, if you are buying, you can say, "No, I don't want to live there because it is going to be noisy and people are going to pee in my front garden". If, on the other hand, it is social housing, to a certain extent,

you go where you are sent, which makes it even harder for residents to avoid the worst results of licensing.

Richard Brown: I do not see a great deal of it because the project I work for, at Westminster Citizens Advice, deals only with the licensing side of it although sometimes that necessarily involves looking at the planning side of it to compare and contrast. Part of the issue for residents is confusion between the different requirements and parameters for each application. Residents can often confuse a licensing application with a planning application. Probably the most common question I get asked is to explain why a premises which has not got planning permission can apply for a licence. Of course, the answer is that the regimes are separate, which sometimes residents do not properly understand. It does involve quite a lot of work for residents. If there is a planning application going in at the same time as a licensing application, especially to co-ordinate support from residents in respect of the proposals, it is quite a lot of work and that goes back to the question of balance.

It was interesting for me to speak to my colleagues—who I have never met before today, but to speak to them outside—about their views on the balance. My view is slightly different, which is that the Act provides a framework where the right balance can be struck. The question is whether in day-to-day practice that happens. My view in Westminster, which is where I do all my work, is that generally it does. The view from my colleagues is that it does not. That is a shame because, going right the way back to the White Paper in 2000, prior to the Act, it was made very clear that one of the reasons for moving the jurisdiction from the magistrates to the local authority was to give residents more of a say and to make the decision-maker more accountable to local residents who were affected by the decision. That is explicit in the Act, with residents able to make relevant representations. It has been made more explicit with the removal of the vicinity test in 2011 and the change from decisions having to be “necessary” to “appropriate”. The difference that has made in practice is debatable, but it is clear that that is the aim of Parliament, to involve residents more, and I think more could be done.

- Q71 **Baroness Henig:** That moves us on neatly to the licensing committee itself. To declare my interests, I am a non-executive chair of a private security company, president of the Security Institute and committee member of the Beer and the Wine and Spirits All-Party Parliamentary Groups. To turn to the licensing committee, I was interested in what you said there, Mr Brown, about striking a balance because the power of the licensing committee is obviously a power delegated on behalf of the people as a whole to reach a holistic and balanced decision, and that is what the Act has tried to ensure, weighing everybody’s interests. The question then becomes: how do the members of the licensing committee see their role and how do they operate in practice? From what you are saying thus far, the suggestion is that that is not happening in practice. I am not quite clear whether you are saying that members of licensing committees are not good at their job, or that the interests of maybe businesses are being taken more account of than the interests of

residents, or that they are being led by their advisers. I am not quite sure, but clearly you are not happy about the actual performance of the licensing committees, and perhaps you could tell us why.

Dr Shrank: My initial experience was that I was at one of the first licensing applications in my town and we had a meeting which finished at lunchtime. We were given a decision by the committee that they agreed that the licence should not be extended. The chap was claiming grandfather rights and wanted to extend the hours. It was in the middle of a residential area. The committee agreed with us that there could well be troubles and, therefore, they would refuse it. The legal adviser leaned over to the chairman and said, "Please don't confirm that now. Let's have a break and then we'll come back". So they had a break, they came back and they made the decision to approve it. That is my experience, having been to about 50 licensing hearings in my town, and that has been the effect of the legal advisers in our area. We have membership all over the country and some in Wales and that is the general expression I get. Westminster, I think, is a separate condition. I know the set-up in Westminster quite well because I used to know Audrey Lewis, who was the portfolio holder, and I attended meetings in London with her. The Westminster situation is unique. I tried to persuade my members locally, "Look, let's follow the Westminster practice", but they are very keen to be local and decide for themselves, and that is what has happened; they do not give proper weight to residents' concerns.

The Chairman: Does anybody have anything to add?

Patricia Thomas: I am a serial interested party at hearings. On the whole, in Camden, licensing committees do their job quite well, but it troubles me that it is almost a racing certainty, particularly in my area, which is a special policy area where there is a presumption to refuse applications, if you know which panel is going to consider an application, you have a pretty good idea, although you cannot be absolutely certain, of the likely outcome. That probably is not quite right. I do not know how you do anything about it, but it does not seem to be absolutely the way it should be.

Another problem in Camden, and I do not know whether this is common, is that, because the members are very busy, it has now become the norm that a panel of three can become two at a hearing. That is very different in decision-making terms from having three members. I have been present when the expectation was that there were going to be two members but one did not turn up and we were all sent home. That again seems to me not a good way of running licensing committees.

On the point about the legal advisers taking a large part, I have certainly been aware of it. In the very early days, when I started going to hearings, it seemed to be the case that the legal adviser was always stopping the residents and saying, "You can't say that". Of course, it is quite likely that the residents were saying things that they should not because nobody had told them otherwise; and of course the applicant

was never told anything of the sort, even if they were making the same point.

The Chairman: I would just like to bring Mr Brown in.

Richard Brown: It may well be that, in practice, it differs in different parts of the country. My experience in Westminster is that the councillors do recognise that their role is as was described in the question, and I do not think I have ever been to a hearing where I did not feel that I had had a fair hearing on behalf of my residents. The residents are given a full opportunity to address the committee, but obviously staying within the relevant parameters. Anecdotally, from what I hear around the country, it might be that a number of factors dissuade a committee from being as robust as perhaps they might be; for example, the possible misunderstanding as to the level of evidence that is required to take robust action. The Licensing Act says that a representation is relevant if it addresses the likely effect of granting the application, so it is the balance of probabilities. It may well be, and I was discussing this with Dr Shrank and the councillor beforehand, that committees think that they need a higher level of evidence, and the reality is—it is very clear in the case law going back years, up to the Court of Appeal—that the authority has a very wide discretion to make a decision in the public interest. Within that, it can take into account any evidence that is probative to make its decision. I think the leading case says that they cannot consult an astrologer or toss a coin, but outwith that, there is a lot of discretion. Of course, the weight that you give to that evidence might differ, and hearsay evidence of a resident saying, “Well, my neighbour experiences such and such” would not be given as much weight as me saying, “I have a photograph of 10 people having a fight outside”.

Baroness Goudie: I would like to come back to Ms Thomas about having only two people. Has anybody from the residents’ association done any research on what the results of the tribunal are when it is just two instead of three—what the difference is? Three makes all the difference; one cannot do it, and I do not think two is acceptable. The local authority should have a substitute come, having been involved in those things previously.

The Chairman: Would you like to comment?

Patricia Thomas: I do not know of any research into it, but I agree with you that it is a different kind of decision-making and not a very satisfactory one.

The Chairman: Do you think there is a call to have more training for councillors? Would that be welcomed by residents and advisers?

Patricia Thomas: Yes, I do.

The Chairman: Would you like to elaborate so that we can get it on the record?

Councillor Davies: I think there is an issue. At Epping Forest District, they are quite good and try to take into account the view of residents and applicants, but, in general, you can get committee members who will be coming from perhaps a rural or quieter area and they cannot really grasp the difference between the night-time economy and the evening economy. They think it is just the general evening noise of people coming out of a pub and do not realise the numbers of people a venue can attract and the real noise and uproar that it can cause to the neighbours. I have to mention Loughton. Our lights get turned off at night in Loughton. We are at the end of the Central Line tube now, so the 24-hour tube is open, but our lights are switched off. Some of our venues have caused such problems that you have to understand the issues of a night-time economy, and they often do not. They are coming from a rural area where it is nice and quiet and there is just a pub and they do not understand it at all.

Dr Shrank: The councillors who represent the areas where the venues are, are excluded from sitting on the committees on the grounds that they might be biased, but they are the very councillors who understand the problems of the difference between the evening and the night economies. I have often heard people say, "If you live in a town or city centre, you must expect noise". They do not seem to understand the difference between noise prior to and after 2300; they think it is the same.

Q72 **Baroness Goudie:** What are your views on the procedure governing hearings before the licensing committees? Do residents participate fully in the procedure? What are the barriers and how can they be overcome?

Dr Shrank: Are you talking about preparation for a committee meeting?

Baroness Goudie: Or, when they are at the committee meeting, do they feel comfortable to participate in the meeting?

Dr Shrank: There are usually very good regimes laid out as to the order of presentation; they go with the applicant and then the local officers and then any people who have made representations speak. I have never been to a meeting where I have been unable to speak. I may be stopped from speaking, but I will not be prevented from giving appropriate evidence. From that point of view, it is very fair. It is what they do with the evidence that is the problem. They hear it; it goes in one ear and it comes out the other.

Richard Brown: The authority has some scope to set out the procedure itself, within the Hearings Regulations, and practice differs. For example, in some authorities, the objectors go first in the hearing. My view is that that does not encourage or facilitate residents being able to engage effectively. My experience in this, which has become more and more obvious as I have been in the job longer, is that the hearing is an absolutely vital part of the process for residents. They can engage in it in that they can attend—it is a public meeting—but whether they can engage effectively is an entirely different matter. Applications can change

rapidly during a hearing or five minutes before a hearing; conditions can be proposed or amended; hours can be amended; regulated entertainment can be withdrawn. All sorts of things can happen and the residents might not necessarily know or be confident enough to keep up to speed with them. Where residents can have their say, and do so, it really feeds into the overall decision that the local authority makes, even if it goes against the residents. The transparency of the process—the fact that they have attended and know that they have been listened to, and the reasons for the decision have been explained to them and they have been advised about the review process if things go wrong—is a really valuable part of the process.

The Chairman: Does anybody else wish to comment?

Patricia Thomas: I agree very much with that. I also wish that we had Richard in Camden. The point about residents going first has always worried me because the application form does not demand very much information, so the resident has to make an objection based on what is on the form, perhaps only the hours, what they know about the applicants and so on, because they do not know what the applicant is going to do but they still have to make their objection at that point. Although they have an opportunity to ask questions later and to sum up, that is their main opportunity to speak. So I quite agree with that.

On the question of the procedure at hearings, I would like to mention the problem of getting the residents there before the hearing. In Camden, I am practically the only resident who ever attends hearings—though not quite, as there are two residents associations which will turn up if the application concerns their area. I feel that somebody has to do it and I wish it was not always me. One of the reasons is that there is very little publicity for the application.

The Chairman: How would you like to see more publicity?

Patricia Thomas: I would like to make sure that the blue notice, which should appear on the windows of the venue, is always there, because Camden does not seem to worry about it very much. Even so, I am not sure that local residents would take a lot of notice of that.

The Chairman: If you compare it with a planning application, would you like to see something similar?

Patricia Thomas: I would like to see something similar because in Camden that has improved recently. It would tell people that a hearing was coming up. There is a prior difficulty, which is that the residents cannot see the connection between taking an interest in an application and the noise that might ensue. If Camden, as well as Westminster, employed Richard, I think that would make a whole lot of difference.

The Chairman: I am not sure that we are allowed to recommend that, but it is interesting.

Richard Brown: There are only 24 hours in a day.

Baroness Goudie: That was very helpful.

Lord Brooke of Alverthorpe: Staying with Mr Brown, you said earlier that more could be done to help. Could you say what that would be?

Richard Brown: The practice that some authorities have of notifying residents of applications within a certain radius of the premises is one. Anecdotally, the blue notice, as Patricia mentioned, does not assist residents in finding out about applications. Another is having easily accessible lists of pending applications on council websites and publicity about that. It would also be useful to have a working online register where you can access application forms. Again as Patricia said, the bare pages of an application form does not really give a very good indication of what is proposed. That can work both ways: it could be a proposal that really is not particularly offensive but, in the bare pages of the application, looks like it is; and the other way round might also be the case. It can be very useful for residents to have access to information which tells them about that. In some authorities there can be a disconnect between residents wanting to know how they can get involved and actually finding the information to do so.

Lord Brooke of Alverthorpe: Lord Chairman, I apologise: I did not declare my interests. I am vice-chair of the All-Party Parliamentary Group on Alcohol Harm, a patron of the British Liver Trust and a patron of a rehabilitation centre in Kent.

Q73 **Lord Blair of Boughton:** I also should declare an interest as having been once a detective chief inspector of the wonderfully named Holmes police station in Camden which covers the Camden Lock. I want to move away from the licensing hearings to the preparation of the responsible authorities, such as the police, environmental health, and planning and licensing authorities themselves. As well as notices, are they giving adequate attention to the interests of residents, and are they reaching out to the residents if they are not hearing anything? If there is nothing coming from the residents, is there a job for the responsible authorities to say, "Oi, do you know what's about to take place?"

Patricia Thomas: I am quite sure that there is a job to be done there because the residents cannot be expected to know what is happening if nobody tells them or if people tell them in a little blue notice. I do not think Camden is doing a great job about that, although it does a great job about some things. One of the reasons is that it is going to be a bit of a nuisance if residents want to come to hearings in their great numbers. I think some people in the Council would possibly prefer a quiet life, but I do not want them to have a quiet life, and I am sure this Select Committee does not.

Councillor Davies: I think you need to start a residents' association, Patricia.

Patricia Thomas: Yes, I think I should.

Lord Blair of Boughton: Any other comments?

Richard Brown: I think they do, but it might depend how well-resourced the local authority is, including, for example, having a noise complaint line. Westminster has a 24-hour noise complaint line where you can phone and build up a pattern of complaints. I am not sure how the process works, but that presumably would be picked up on by the relevant people. Of course, the most sensitive time for noise complaints is the night-time and having a 24-hour service, which that would involve, does involve a lot of resources. My experience is that the police and environmental health are receptive. I have done a number of cases where the police have augmented my case and vice versa, and the same with environmental health, but they come from slightly different perspectives, and that is why the role of residents is so important and may be why it was made so important in the Act. The police obviously come from more of a crime and disorder angle. Environmental health is holistic, looking at the situation in general, but it is residents who can actually speak to the situation in their street and in their house if they overlook the back of the premises. There are all sorts of nuances that can be fed into it which might not necessarily be picked up.

The Chairman: Apparently, there are currently newspaper advertisements that alert people. Do you find that these work, that they are effective in notifying?

Patricia Thomas: I think they are there and likely to be in two newspapers in Camden, but I do not think anybody is looking at the little ones.

The Chairman: Of course, they are hugely expensive for a council.

Patricia Thomas: Yes, they are usually expensive.

The Chairman: I know, having advertised surgeries in my previous life, it is about £300 a shout to get a tiny advert that is so small no one can read it. People say the same about these posters on roundabouts for planning when they are going to expand the roundabout, that no one can read that. I notice that you, Mr Brown, shook your head. We cannot record that, so would you like to elaborate?

Richard Brown: No, I do not think that they are a particularly useful form of notification.

Councillor Davies: In Loughton, we have a very strong residents association and we have a newsletter where things like this will be mentioned or, if it were a major problem with a particular bar, special leaflets would be given out to all the neighbouring properties so that it could not fail to be noticed.

The Chairman: Thank you. Lord Smith, would you like to give your declaration first, please?

Q74 **Lord Smith of Hindhead:** I am the chief executive of the Association of Conservative Clubs; I am the chairman of CORCA, which is the Committee of Registered Club Associations; and I am on the executive of

both the Beer All-Party Group and the All-Party Non-Profitmaking Clubs Group. I am a trustee of about 200 clubs, an honorary member of the Carlton Club and a member of several other clubs. I think that is everything.

I accept everything that you have said. In particular, I thought the notice point was interesting—that more people should be given notice. Is it not the case with residents that you particularly are interested in and concerned with this, and the fact that other residents do not turn up may be due to their not being notified or to the fact that they are simply not interested. Some residents are really not that engaged. You are obviously very engaged with your local communities. I see from your biography that you got a 1,000-signature petition when you were doing your thing, Councillor Davies, but some people are not that concerned about it. If they become concerned about either an application for a licensed premises or a licensed premises which is already causing a difficulty, they already have the power to get together and speak to their local councillors; and ultimately, it is the local residents who elect or deselect the councillors who are representing them or who are on the licensing application boards anyway. Ultimately, the residents are in charge and are empowered to change the people who make the decisions on whether licences are granted or not; but some residents may not be interested and may not share your concern.

Patricia Thomas: It is certainly true that some residents are not interested, but I think they could be interested if they knew the connection between their taking an interest and Camden not being such a noisy place at night-time. I think that is the case. It may be that nothing would stir their interest, but I do not think so.

Dr Shrank: I think the problem is that the blue notice system is not that obvious to the passers-by in the way that a planning notice, which is put on a lamppost, is right where you cannot miss it because it was not normally there; whereas many licensed premises will have notices on their window and the blue notice is just another notice and, even if you read it, as has been pointed out, it does not really frighten you as to what the consequence might be. When the legislation originally came out, I was a member of a group which tried to change it and said, "Look, we don't want the blue notice. We would like another white notice just like everybody else", so you would know that it was a local authority problem and not hidden away.

Lord Smith of Hindhead: But a council chamber with a packed public audience can often change a vote, can it not, so perhaps you are not packing the public audience because the local residents do not share the same concerns. I have never met a residential association yet which is pro-licensing. The only time the residential association is pro-licensing is usually when the local pub is closed and then they want a Community Asset Order to keep the pub going.

The Chairman: I think we have established that perhaps you are not being told that there is an application, which is quite helpful for us.

Baroness Grender.

Q75 Baroness Grender: I need to declare an interest. I held a temporary event notice for a school summer fair last summer—which is what I want to ask about: temporary event notices. Do you feel that residents are notably adversely affected by temporary event notices, and under what circumstances? Is there any way that you would change the current temporary event notice system?

Dr Shrank: The problem with the TEN system is that residents know nothing about it until it happens. There is no advertisement, there is no warning and it comes out of the blue. A large number of them, the vast majority, as far as I am aware, cause no problems. But when they do cause problems, it gets into the press and you hear about the ones that are awful. How many really are that awful, I do not know, but it is not a major problem. There are a few people who abuse the system, and some licensees will take advantage of the fact that they are 168 hours a week and you can have 15 of those in a year, which is tantamount to about a third of the year. It conflicts with the planning and the licensing conditions as they can extend the hours, which nobody expects. How you alter that, I really do not know, unless you advertise it.

Richard Brown: It is one of those situations where it could be open to abuse. I do not see it, but it could be because of the way it has come about. I was not around pre-Licensing Act 2003, but I understand that the temporary event notice system was not necessarily intended for premises with premises licences to have 15 a year, it was intended for something slightly different. That may be why initially only the police were able to object to temporary event notices and there was a 48-hour window for doing so. That changed and environmental health can now object as well and conditions can be put on a temporary event notice. There are two things with that that could lead to problems. One is that conditions are not automatically put on; it requires an environmental health or police objection. The second is that the conditions that can be imposed are only the conditions that are already on the licence. If the licence is an old converted licence from the old legislation, it has not really got any conditions on it which would address the nuisance from 10 pm to 4 am, for example, and conditions cannot be added by law. Undertakings can be given, but conditions cannot be added, and that could be looked at.

Baroness Grender: I would like to be absolutely clear on that, because we did a visit to Southwark recently and TENs are a big issue there. You are saying that in Westminster it is not an issue?

Richard Brown: There are lots of TENs.

Baroness Grender: There are TENs, as originally intended, for community groups, and then there are TENs that are being used for highly commercial operations?

Richard Brown: Yes—sorry, I should clarify. The point about not seeing it in Westminster is that I do not see it being abused in the way that it could potentially be. There are a lot of temporary event notices in Westminster in general, and for all sorts of premises.

Patricia Thomas: Camden may be more like Southwark. It really is a problem in Camden, particularly where I live off Chalk Farm Road, because in the market there is liable to be at least one TEN per weekend night, maybe three, and we are not told about them; there is no means of finding out when they are going to happen. The licensing authority assures me there is nothing they can do about them—they have to go through, and there are difficulties about imposing conditions. It means that the venue can be open until 5 am, so that instead of people peeing in our front gardens and vomiting in the streets until 3 am, they can do so between 3 am and 5 am too, so residents do not get very much sleep. If you think of that happening two or three times per weekend, we do not get very much peace and quiet.

Q76 **Baroness Watkins of Tavistock:** I now want to turn to the issue of mediation, and in particular whether residents have an adequate opportunity to participate in licensing appeals through mediation and whether you think mediation should be more formal under such circumstances.

Dr Shrank: When the mediation goes on with the police, we often do not find out what the result is until the hearing or the appeal. The same thing applies with the mediation with the applicant; you never hear what mediation has taken place until the hearing occurs. I am not aware of mediation taking place with residents. On appeals, if an appeal is made by the applicant, the residents, or anyone who made representations, have no third-party right to appeal or to be involved in the appeal.

Baroness Watkins of Tavistock: That is partly what we would like to know, whether you would support a role for formal mediation of appeals involving residents.

Dr Shrank: The mediation may alter the conditions which then may conflict with what the original application was for, which was supported by residents, and they have no involvement. It would be very valuable if they could be given third-party rights in appearing at an appeal so that they will then be involved in the process.

The Chairman: Mr Brown, is it not the case that residents can be involved at every stage and, if they have made an objection at an earlier stage, they will have the right to be involved in mediation. So the question the Committee would like to ask is: why are they not being involved? Is it because they are not getting in at the objection stage because of not being informed?

Richard Brown: The central tenet of my written evidence was that the framework exists, whether in practice it happens, and I think it is similar here. Residents do not have the right to be involved in an appeal or the

right to be joined as a party to an appeal. They can apply to the court—there was a case about this some years ago—to be joined as a party to the appeal, but the local authority does not have to take their views into account on appeal. If the local authority has refused an application because there are 20 resident objections, you would think that of course they would involve the residents in the appeal because they are defending their decision which was based on the residents' views, but they do not have to necessarily. I can think of cases I have done which have gone to appeal where a more formal mediation would certainly have been useful. In fact, I got into licensing by doing appeals. The firm I trained at did the appeals for Westminster and there were about 350 of them in 2005 on transition and there was a lot of mediation involved in those. The majority of them settled beforehand, but I think it is useful.

The Chairman: I am advised—and I am not an expert—that the law is that anybody who makes a representation and objects is not entitled, so it is a bit worrying for the Committee to hear from Dr Shrank that they are not being involved. Is it something you want to pursue?

Baroness Watkins of Tavistock: You feel that you do not have, or are not given, the right to be called again to the appeal?

Dr Shrank: That is right. Sometimes, if the council wishes to fight the thing seriously, they will invite some residents to be witnesses and they then can be party to the appeal, but they cannot be a party on their own.

Baroness Watkins of Tavistock: I think that is very helpful.

Richard Brown: There is a distinction which should probably be made between being a party to the appeal and being a part of the authority's case as the respondent. There is the right—and I am looking to the legal adviser to correct me if I am wrong—to apply to be joined as a party, so as a separate respondent.

The Chairman: It would be good to hear what the legal position is.

Baroness Watkins of Tavistock: Clearly, there are some interesting things. I am sorry; I did not declare my interests at the beginning. I am a non-executive of a housing association, so I understand the social housing issue, and I am a visiting professor of nursing at King's College with a particular interest in mental health.

Q77 **Lord Foster of Bath:** I have no formal interests to declare, but, since I am going to ask a question about it, I should declare that I steered the Live Music Act through the House of Commons. My question is in two parts. First, what is the view of local residents on the Live Music Act, both the original one and the amendment in 2015? Secondly, attached to that, do you believe that residents are sufficiently aware of the other measures that are available in other bits of legislation that can be used to address issues of noise nuisance, anti-social behaviour and so on? Can I just place on the record that I am a huge fan of Westminster's 24-hour noise hotline, which is excellent.

The Chairman: We will all be ringing it up during the week.

Dr Shrank: Street noise from licensed premises is the major difficulty that residents have. The argument is that such noise up to 11 pm is acceptable and may be okay, but after 11 pm it is not. The Live Music Act only applies to music up to 2300, so that is not, on the whole, a particular problem. It is when the noise goes on after 2300 that it is a major problem. Lord Clement-Jones was very helpful to us. We had a long session with him and his advisers when the Live Music Bill was going through and he listened to our concerns of how much noise pollution would occur as a result. One of the difficulties is that live music, if it is unamplified, is not usually a problem, but unfortunately they have allowed backing tracks to be as acceptable as live, unamplified music, but it is not, and sometimes that can cause problems. It is not the Live Music Act itself that has given a lot of difficulty; it is the problem with noise control outside the limits of the Live Music Act, which are covered by the Licensing Act and the Noise Acts, but they are not that easy to use.

The Chairman: Councillor Davies, would you like to comment?

Councillor Davies: Apart from the general noise that you get from the pubs which have now turned themselves into bars, we have not had issues particularly. We have had some restaurants that turn themselves into ones that have live music, but I am not aware that we have had much of a problem with that.

Patricia Thomas: We do have a lot of trouble with music. I am not aware, and I am sure residents are not aware, of the other legislation which replaces this. I agree that the problem lies with amplification because live music, generally speaking, does not carry quite so far. There is also a big problem, which I have not been able to get to the bottom of, to do with sound limiters. At one time, we all breathed a sigh of relief because we were told that Camden was ensuring that all the venues had sound limiters and everything would be all right because Camden would agree the limit to the sound that would emerge, but that all seems to have collapsed and venues' sound limiters don't work, and nobody worries but the residents.

Richard Brown: The Live Music Act, as enacted, probably went far enough in a terminal hour of 11 pm for 200 people. Subsequent deregulation may have gone a bit further than would be ideal for residents. Having said that, I have not seen a particularly adverse effect from it, no doubt because of the terminal hour, which is generally seen as a good balance. I have been involved in reviews where we have asked to reapply the conditions which have been disapplied by the legislation, but that is what the legislation envisaged, that you can do that if a problem arises.

The Chairman: On behalf of the Committee, I thank each of you on the panel for being available today and for your excellent contribution, which gives us much food for thought. Thank you very much indeed for being with us today; we really appreciate your evidence.