

SHEFFIELD CITY COUNCIL

Licensing Sub-Committee

Meeting held 5 June 2014

PRESENT: Councillors David Barker (Chair), George Lindars-Hammond and Geoff Smith

.....

1. APOLOGIES FOR ABSENCE

1.1 No apologies for absence were received.

2. EXCLUSION OF PUBLIC AND PRESS

2.1 No items were identified where resolutions may be moved to exclude the public and press.

3. DECLARATIONS OF INTEREST

3.1 There were no declarations of interest.

4. LICENSING ACT 2003 - D'MICHAEL'S, 534 ECCLESALL ROAD, SHEFFIELD, S11 8PR

4.1 The Chief Licensing Officer submitted a report to consider objections in relation to applications for two Temporary Event Notices, under Section 104(2) of the Licensing Act 2003, in respect of the premises known as D'Michael's, 534 Ecclesall Road, Sheffield, S11 8PR.

4.2 Present at the meeting were Michelle Akers (Designated Premises Supervisor, D'Michael's), Marshall Sutherland (Manager, D'Michael's), Neal Pates and Jon Round (Environmental Protection Service, Objectors), Clive Stephenson (Licensing Strategy and Policy Officer), Marie-Claire Frankie (Solicitor to the Sub-Committee) and John Turner (Democratic Services).

4.3 Marie-Claire Frankie outlined the procedure which would be followed during the hearing.

4.4 Clive Stephenson presented the report to the Sub-Committee and it was noted that objections to the two Temporary Event Notices (TENs) had been submitted by the Environmental Protection Service on 30th May 2014, and were attached at Appendix 'B' to the report.

4.5 Neal Pates stated that he and a colleague responded to two complaints which had been referred to the Night Time Noise Team on 25th May, 2014. Due to the time delay in terms of the referral of the complaints, when arriving at the complainant's home, they were informed that the noise levels had decreased, and in their own findings, determined that it was not at a harmful level. Although there were a number of other bars within the vicinity of the premises, it was clear that the

majority of breakout noise was coming from D'Michael's, and was mainly linked to the opening of the main doors to the premises. Mr Pates stated that there was no lobby at the main entrance, and during the visit, he noticed that the door was open approximately 40/50% of the time during their observations. They also witnessed that staff were holding the doors open for long periods of time to allow customers to enter and leave the premises. The officers approached the door staff to inform them of their observations, and advised them to keep the doors closed, other than when customers were arriving or leaving the premises. The noise levels, which comprised club-type dance music, was subjectively assessed to exceed typical guidance levels of no more than +3 dB, relative to the residual ambient noise level. Mr Pates added that the Night Time Noise Team had received a further complaint on 1st June 2014, and following a further visit to the premises at 00:30 hours, it was found that, although the noise levels were contained when the doors were closed, there was an 'extreme' breakout of noise when they were opened. It was also observed on this visit that customers were using the outdoor terrace area after the permitted time of 21:00 hours. Mr Pates concluded by stating that, from his observations, the level of noise breakout at the premises amounted to a public nuisance.

4.6 Jon Round added that the complaints received by the Night Time Noise Team related mainly to functions held as part of TENs. He added that he had visited the premises, and met Mr Sutherland, to discuss the issue of noise breakout.

4.7 In response to questions from Members of the Sub-Committee and Michelle Akers, it was confirmed that two complaints, on each day, were received with regard to noise breakout from the premises on 2nd March, 3rd May and 25th May 2014, and a further single complaint on 1st June 2014. In terms of complaints, members of the public would call the '101' number, and those calls relating to noise nuisance were transferred to the Night Time Noise Team and, depending on the nature of the complaint, they would be referred to officers to investigate. It was quite common that there would be a delay in terms of the officers attending the complainant's home for the premises in question, often resulting in a difference in terms of noise levels. It could not be confirmed whether officers visited the complainant's home or the premises in question on the dates of the complaints. Mr Pates confirmed that the issue in terms of noise breakout occurred predominantly when the entrance doors were opened. Whilst there were a number of other licensed premises in the area, there were very rarely any issues in terms of noise nuisance relating to these other venues, although it was accepted that local residents suffered a level of noise nuisance linked to people leaving the venues and queuing for taxis. It was accepted that the majority of the problems with regard to noise nuisance linked to the premises had occurred on the nights the functions operated under the Temporary Event Notices had taken place. This was mainly due to the later opening time, when all the other venues had closed. The majority, if not all, of the complaints were received prior to 01:00 hours, and none involved callers ringing back after this time to report continuing problems. Whilst it was accepted that the Temporary Event Notices were used to host private parties, which would result in the attendees remaining in the venue for the majority of the duration of the event, the issues reported with regard to noise breakout when the doors were opened related mainly to customers opening the doors to go out onto the external terrace area.

- 4.8 Michelle Akers put forward her case, indicating that the premises comprised a bar/diner, focusing on both seated and vertical eating. There was fixed seating for 42, together with other seating, and the majority of the food was served in baskets, providing customers with the option of either sitting down to eat, or walking around whilst eating. The premises usually closed at around 22:30 hours Sunday to Thursday, but stayed open until 01:00 hours on Friday and Saturday, when there was a DJ. The staff did not empty any bottles or other waste into the external bins until the following morning so as not to disturb residents living nearby. Ms Akers stated that officers from the Environmental Protection Service had never raised the issue of having a lobby at the main entrance, so as to reduce any possibility of noise breakout. She added that several functions using TENs had been held at the premises, without any problems or complaints from residents. Marshall Sutherland added that he believed that problems of noise nuisance had increased in the area following the recent opening of the Pointing Dog, a new venue situated directly opposite the premises. This was a large establishment, and was attracting large numbers of people to the area, thereby increasing noise levels. He stressed that there were very rarely any problems associated with the operation of D'Michael's, and that he had taken action over and above what was required under the present licence, such as installing CCTV.
- 4.9 In response to questions from Members of the Sub-Committee and Neal Pates, Ms Akers stated that this was the fifth time she had applied for a TEN, with some of the Notices not being used for various reasons. The most recent applications related to two private functions, one a housewarming and the other a 50th birthday party. The premises management would usually vet applications by assessing the age range of potential customers, and would not allow any 18th or 21st birthday parties. The maximum capacity at the premises was 120, but it was very rare that this many people would attend. In terms of the entrance doors, it was very difficult to take any further steps to ensure they were kept closed as long as possible as it was not practical with customers entering and leaving the premises. The premises management would continue to work with the Environmental Protection Service in order to address any future possible noise issues in terms of complaints. Ms Akers stated that only one complaint had been made directly to the premises, which was from a local resident, and referred to noise nuisance relating to the disposal of glass bottles into the exterior bins. The management addressed this issue, and would give consideration to any future complaints or requests in connection with the operation of the premises. In terms of the capacities for private parties, this would be monitored by the staff on the door counting customers into the premises, using a clicker. Neither of the two functions organised under the TENs were ticketed events.
- 4.10 Michelle Akers and Marshall Sutherland were given the opportunity of summing up their case.
- 4.11 RESOLVED: That the public and press and attendees involved in the hearing be excluded from the meeting before further discussion takes place on the grounds that, in view of the nature of the business to be transacted, if those persons were present, there would be a disclosure to them of exempt information as described in paragraph 5 of Schedule 12A to the Local Government Act 1972, as amended.

- 4.12 Marie-Claire Frankie reported orally, giving legal advice on various aspects of the application.
- 4.13 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees.
- 4.14 RESOLVED: That the Sub-Committee agrees to acknowledge the Temporary Event Notices, allowing the two events to go ahead on the proposed dates, as per the applications now submitted, and in accordance with the premises' existing licensing conditions.

(The full reasons for the Sub-Committee's decision will be included in the written Notice of Determination.)