

MEETING OF THE LICENSING SUB-COMMITTEE

held 29th May 2012

PRESENT: Councillors John Robson (Chair), David Barker, Jillian Creasy and Neale Gibson.

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1. WELCOME AND HOUSEKEEPING ARRANGEMENTS

1.1 The Chair welcomed attendees to the meeting and outlined basic housekeeping and fire safety arrangements.

2. APOLOGIES FOR ABSENCE

2.1 No apologies for absence were received.

3. LICENSING ACT 2003 – THE ECCLESALL, 255 ECCLESALL ROAD, SHEFFIELD, S11 8NX

3.1 The Chief Licensing Officer submitted a report to consider an application to vary a Premises Licence made under Section 34 of the Licensing Act 2003, in respect of the premises known as The Ecclesall, 255 Ecclesall Road, Sheffield, S11 8NX.

3.2 Present at the meeting were John Coen and Kimberley Chilton (Ford and Warren, Solicitors, for the Applicants), Donna Torgius (Objector), Martin Cowell (Representing the Objector), Sean Gibbons (Health Protection Service), Jonathan Round (Environmental Protection Service), Andy Ruston (Licensing Officer), Louise Slater (Solicitor to the Sub-Committee) and John Turner (Democratic Services).

3.3 The Solicitor to the Sub-Committee outlined the procedure which would be followed during the hearing.

3.4 Andy Ruston presented the report to the Sub-Committee and it was noted that representations had been received from a local resident and were attached at Appendix 'E' to the report. Mr Ruston added that the representations received from the Health Protection Service had been withdrawn and that, further to the representations received from the Environmental Protection Service, an agreement had been reached with the applicants in terms of a number of amended conditions.

3.5 Sean Gibbons reported that, following detailed negotiations with the applicants, he had considered it appropriate to withdraw the objections of the Health Protection Service. He stated however, that he was due to meet with the applicant's architects on 11th June 2012, to discuss two outstanding issues of concern, regarding the safety in terms of the furniture on one of the external decking areas and the safety of the surface of the

decking.

- 3.6 In response to questions from Members of the Sub-Committee and the objector's representative, Mr Gibbons stated that he was confident that both these outstanding issues would be resolved following the meeting on 11th June 2012. John Coen added that any potential issues would be covered by Health and Safety Regulations. Despite the lack of contact from the applicants, Mr Gibbons was confident that all the outstanding issues regarding the application would be resolved. He did, however, confirm that there had been a breach of Condition 3 under Annexe 2 of the current Premises Licence in that during a visit to the premises on 27th April 2012, he had noticed that the electrical sockets for the purposes of live entertainment did not have the benefit of residual current device (RCD) units. He was informed that their electricians would ensure that this issue was resolved immediately. In terms of the lack of communication between the Service and the applicant's management company, Mr Gibbons confirmed that, although there had been communication problems in the past and that he had serious concerns regarding the operation of the management company, a new management company had now been appointed, which he believed would be a big improvement. When making a request on 20th April 2012, to meet with the applicants, no response had been received from Punch Taverns Plc and on the visit to the premises on 27th April 2012, at which it was discovered that the Designated Premises Supervisor (DPS) was not present, no attempts had been made to identify where the DPS was at that time. Mr Gibbons confirmed that there was no evidence of any RCD units protecting the electrical sockets for the purposes of live entertainment and the staff at the premises at the time would have been expected to notice them if they had been installed. Despite asking to see a copy of the Premises Licence, the member of staff was not able to produce one. The Service was aware of the new management company in that they were responsible for operations at three public houses, The Chantry, Prince of Wales and White Lion. Mr Gibbons concluded by confirming that he had not held any discussions with the new management company in terms of the operation of the premises.
- 3.7 Jonathan Round stated that he had also had considerable contact with John Coen which had resulted in the agreement of four amended conditions which, on request, he read out at the hearing. He confirmed that all the other proposed conditions he had suggested, had now been withdrawn.
- 3.8 In response to questions from Members of the Sub-Committee, the applicant's representative and the objector's representative, Mr Round stated that during the last five to six years, there had been a number of complaints regarding noise nuisance in connection with various events held at the premises and consequently, a number of new conditions had been added to the licence in response to this. More recently, a complaint was received on 27th February 2012, regarding noise nuisance at a jazz night held at the premises on 25th February 2012, at which the front doors

were wide open and there were speakers outside. A further complaint was received on 30th March 2012, relating to noise from a disco at the premises. In response to this, Mr Round visited the premises on 1st April 2012, and was informed that the jazz nights had now stopped but that the disco was to be a regular event. Whilst at the premises, he checked the sound limiter. Further to this visit, on 5th April 2012, he received a telephone call from the DPS, who indicated that he was not aware of the current conditions of the Premises Licence, but indicated that he would make sure the external speakers were turned off. In terms of complaints of noise nuisance, other than music-related, Mr Round stated that, although it was not seen to be a major problem, there had been some issues in terms of noise created by customers gathering outside the premises. He confirmed that Council officers had not witnessed the incidents which had resulted in the complaints on 27th February and 30th March 2012. He confirmed that, if the Sub-Committee were to agree the suggested conditions, he would have no further concerns regarding the licence. However, he stated that he still had some concerns regarding the quality and effectiveness of the glazing of the bi-folding doors, and indicated that he would prefer the installation of some form of physical measures. Whilst he accepted that once the sound limiter had been installed and set, and would therefore assist in limiting noise levels emanating from the premises, there was no guarantee that such a system could not be tampered with.

- 3.9 Mr Round confirmed that there had been a history of complaints of noise nuisance in respect of the premises during the last five to six years and that, despite the fact that there had been cause for the licence to be reviewed by this Sub-Committee, which had resulted in additional conditions being put on the licence, there had still been complaints of noise nuisance. He also confirmed that he was aware of incidents whereby sound limiters had been tampered with at other licensed premises in the City and that the DPS has live music in the other pubs he was responsible for.
- 3.10 Donna Torgius stated that she was not convinced there were proper safeguards to ensure there would not be any more problems in terms of noise breakout from the premises and noise nuisance from customers drinking outside the premises. She stated that she would like a condition placed on the licence requiring that the external areas to the front and rear of the premises be not used after 22:00 hours Sunday to Thursday and 23:00 hours Friday and Saturday. She also requested that there be an additional condition relating to noise levels in terms of breakout from the premises. She specifically requested that these conditions be placed on the Premises Licence in the light of the difficulty faced by residents in objecting to Planning Regulations. She referred to the history of complaints of noise nuisance in respect of the premises and to the problems regarding the management in not complying with the conditions of the Premises Licence in the past. She concluded by stating that she had moved into her present home in February 2012, and had been affected by noise nuisance from the premises, mainly relating to customers using the front external area.

- 3.11 In response to questions from Members of the Sub-Committee and the applicant's representative, it was stated that Ms Torgius had experienced vibration in her house as a result of the noise levels emanating from the premises and had experienced particular problems of noise nuisance, into the early hours of the morning, during the recent Sheffield United v Stevenage play-off football match, which had been televised live at the premises. Ms Torgius stated that she had lived in Sheffield for four years and was well aware of the vibrancy of Ecclesall Road prior to moving into her new premises in February 2012. Whilst she was not familiar with her wider neighbours, she believed that the neighbours either side of her property had not made any representations regarding the application to vary the Premises Licence as they were students and would not be too concerned as they would not be staying there long. She added that the other reason that other neighbours may not have made representations was that she only became aware of the application when she received a leaflet relating to the planning application, so there was a likelihood that other neighbours were not aware of the application. She accepted that there was a reasonable distance from her property and the premises, on the basis that Ecclesall Road was a wide road and that she had a long drive, but stated that she could still hear music coming from the premises, as well as being affected by customers drinking at the front, external area of the premises. Although she was aware of the premises prior to moving into her new home, she did not check the terms of the Premises Licence. She confirmed that there were no longer any problems of noise nuisance caused by loudspeakers at the front, external area of the premises and that she did not have any cause for concern in terms of noise nuisance regarding the front, external area of the premises when sending in her representations on 1st May 2012. Ms Torgius confirmed that she was aware that the bi-folding doors would be closed during any regulated entertainment and accepted that, as part of her representations, she had not requested a reduction in hours in terms of the use of the front, external area of the premises. She indicated that whilst the proposed conditions in respect of the front, external area of the premises had addressed her concerns to some extent, she would prefer it if this area was not used after 22:00 hours. In conclusion, Ms Torgius stated that whilst she accepted that she had only experienced problems of noise nuisance during the Sheffield United v Stevenage football match, there may well have been other matches which would have resulted in noise nuisance, but she may have missed these as she spent a lot of time away from home.
- 3.12 John Coen, for the applicants, referred to the conditions set out in Annexe 3 to the Premises Licence, relating to the concessions offered by the applicants, requiring that all amplified sound should go through a sound limiter and that the outdoor area to the front of the premises shall cease to be used after 23:00 hours on any day of the week. He stressed that there was no legal obligation on the applicants to make these amendments to the conditions and that such concessions, together with the four conditions recommended by the Environmental Protection Service, should address Ms Torgius' concerns in terms of potential noise nuisance. He referred to

the nature of the proposed variation, indicating that, in his opinion, there was nothing contentious. He pointed out the fact that the bi-folding doors would be closed during any regulated entertainment and that all amplified sound would have to go through the sound limiter. He also referred to the fact that there were no residential properties within the immediate vicinity of the rear of the premises and that the ethos was to change the operation of the premises in the sense that the sales would comprise approximately 70% food and 30% drink. Mr Coen concluded by referring to the fact that no representations had been received from South Yorkshire Police.

- 3.13 In response to questions from Members of the Sub-Committee and the objector's representative, Mr Coen stated that the aim was to operate predominately as a sports bar, with a minimum of live music, although there would be some live music up to when the planned renovations works commence, in approximately five weeks. Based on the low level of complaints, he did not consider there to be a problem in terms of noise nuisance at the premises, therefore the management had no plans to regulate noise from customers sitting outside the premises. He also stated that, as there were no obvious problems in terms of noise nuisance, there would be no need for additional patrols by members of staff, both internally and externally, to check on any such nuisance. The main benefits of the bi-folding doors was to brighten up the premises in that, at the present time, there were only small windows and it appeared quite dark inside. He stressed that access and egress would still be through the main front door, and not through the bi-folding doors. Mr Coen stated that the reason for requesting the removal of the condition regarding noise breakout limits was on the basis that they were not readily understandable or enforceable and also, the Environmental Protection Service had indicated that they were happy to withdraw this condition. There had been no community engagement in connection with the operation of the premises on the basis that the applicants did not envisage the variation to be contentious. In terms of the change of name of the premises from The Ecclesall to Champs, it was stated that as the existing Champs was to become an up-market restaurant, there was an opportunity to maintain what was a well-established name on Ecclesall Road, and the plan was to continue with the sports bar theme. With regard to the structural works, there was no intention to increase the standing area within the premises, but the main alterations would include the remodeling of the existing car park area at the rear, and increasing the extent of the external licensable area to the rear of the premises. It was understood that there had been an application for the vacant post of DPS on 28th May 2012. The applicants would ensure that, to the best of their ability, the conditions to the license would be imposed. The application for planning permission had been submitted, and was in the process of being determined and if such permission was granted, by increasing the area at the rear of the premises, this would encourage more people to use this area, therefore lessening the potential for noise nuisance at the front of the premises. Mr Coen stated that there was no one available from Punch Taverns Plc to attend today's hearing to give evidence and in terms of the notices exhibited outside the premises, including the name Haywyn Leisure, he could not confirm who this was.

Mr Coen also could not confirm when the previous DPS had left the premises, nor that Adam Firth was the manager of the premises. Further to the request made by Sean Gibbons to see a copy of the Premises Licence during a visit to the premises on 27th April 2012, Mr Coen stated that it was most probably a case of the member of staff present not being able to locate the licence rather than it not being there at all. In terms of the condition in Annexe 2, referring to the requirement to have additional patrols to limit any noise pollution when entertainment was being offered within the premises, Mr Coen stated that staff regularly went outside the premises to collect glasses and to check that there were no problems. Mr Coen could not confirm the number of personal licence holders at the premises and in response to a query regarding the current system in terms of staff taking a pro-active approach to noise control, he stated that the present system operated at the premises was working fine. He was not aware that any records were kept in terms of evidence regarding such a pro-active approach by staff in connection with noise control, nor was he aware of what the approach would be by the new applicants in this area. In conclusion, Mr Coen stated that the applicants had not consulted the Authority prior to submitting the applicant to vary the Premises Licence, but that, given the expert opinion of the Environmental Protection Service, the applicants had agreed to the four conditions now required by the Service.

- 3.14 RESOLVED: That the public and press and attendees involved in the application 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.
- 3.15 The Solicitor to the Sub-Committee reported orally, giving legal advice on various aspects of the application.
- 3.16 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees.
- 3.17 RESOLVED: That the Sub-Committee agrees to vary the Premises Licence in respect of The Ecclesall, 255 Ecclesall Road, Sheffield, S11 8NX, subject to the amended application, operating schedule, agreed conditions and to the modified conditions now made as follows:-
- (a) No amplified sound shall be played anywhere on the premises except through an in-house amplified sound system, fitted with a sound limiter, the setting of which shall be to the written satisfaction of the Environmental Protection Service;
 - (b) The bi-folding glazed doors shall remain closed during the provision of regulated entertainment and after 23:00 hours each day of the week;
 - (c) All external areas shall not be used after 23:00 hours each day of the

week;

- (d) No speakers shall be positioned in external areas of the premises that relay regulated entertainment; and
- (e) Music should only be played within the building such that:-
 - (i) noise breakout from the building to the street should not exceed the ambient* noise levels by more than 3dB(A) when measured as a 15 minute LAeq; and
 - (ii) noise breakout from the building to the street should not exceed the ambient* noise levels in any octave band centre frequency by more than 3dB when measured as a 15 minute Leq;

* Where ambient noise level is LAeq, 15 minutes in the absence of the specific noise source (breakout from the premises)

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

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