

BRIGHTON & HOVE CITY COUNCIL
LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 15 OCTOBER 2009

COMMITTEE ROOMS 2/3, BRIGHTON TOWN HALL

MINUTES

Present: Councillor ; C Theobald, Lepper and Marsh

Officers: Tim Nicholls (Head of Environmental Health and Licensing), Rebecca Sidell, (Lawyer), Annie Sparks (Divisional Environmental Health Officer) and Caroline De Marco, (Democratic Services Officer).

PART ONE

69. TO APPOINT A CHAIRMAN FOR THE MEETING

69.1 Councillor Lepper was appointed Chairman for the meeting.

70. PROCEDURAL BUSINESS

70a Declarations of Substitutes

70.1 There were none.

70b Declarations of Interests

70.2 There were none.

70c Exclusion of the Press and Public

70.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I(1) of the Act).

70.4 **RESOLVED** – That the press and public be not excluded.

71. THE WEST HILL, 67 BUCKINGHAM PLACE, BRIGHTON

- 71.1 The Panel considered a report from the Assistant Director of Public Safety regarding an application for review of a premises licence under the Licensing Act 2003 for The West Hill, 67 Buckingham Place, Brighton (for copy see minute book).
- 71.2 The Licensees Mr Barnes and Ms Parr attended the hearing with their barrister Mr Wells, in order to make representations against the application. They were accompanied by Mr Brown, Regional Manager for Punch Taverns. Ms Taylor and Mr Bennum attended the meeting to make representations in favour of the review application.
- 71.3 The Licensing Manager reported that there had been no representations from the responsible authorities. Recent investigations had included a Section 80 Noise Abatement Notice on 19 July 2009. The concerns of the residents were set out in letters attached to the agenda report. A letter of representation and supporting documentation including letters of support were attached to the report.
- 71.4 The Licensing Manager reported that in the last two years there had been in excess of 40 licensing officer visits late at night. No significant breaches of the licence conditions were discovered. However, in the early visits some minor managerial problems had been found.
- 71.5 Ms Taylor set out her representation. She was objecting on the grounds of public nuisance and her right to respect for private and family life as stated in the Human Rights Act 1998. She felt she had little peace or respect due to the internal and external noise. The noise nuisance included conversation, hand dryers, toilet flushes and laughter heard in her bedroom. Ms Taylor was also disturbed in her bedroom by the conversation of smokers and doorman. Occasionally she could hear amplified music. She felt it was inappropriate for a pub to be open so late in a residential area. No other pubs nearby were open so late with the exception of Zuma and the Grand Central.
- 71.6 Ms Taylor stressed that Buckingham Place was a home to many people trying to live and sleep. It was not a busy road at night. Trains were very quiet and traffic noise lessened after 10-11pm. Voices and laughter were highlighted in the evenings. The sound from the urinals was crystal clear. Ms Taylor stressed that none of the people who had submitted letters of support lived as close to the premises as her.
- 71.7 Ms Taylor informed the Panel that she had lived next door to the premises since 2001. She was not disturbed enough to complain until 2006. Her first official complaint to the council was in 2007. There was still an ongoing noise issue with Westhill and she was still frequently woken or kept awake by noise.
- 71.8 Ms Taylor explained that keeping a noise diary had been an unenviable chore. She asked for the licensing hours to be reduced to normal opening hours and for a noise limiter to be fitted with agreed decibel levels.
- 71.9 In answer to questions from the Panel Ms Taylor confirmed that she found that the noise from the toilets were more of a disturbance than music. She could hear hand dryers, the noise of toilets being used, laughter and screaming. Ms Taylor moved to the

property in 2001 and found that Christmas 2005 had been the first difficult time. She had complained to the landlord for the first two years. She shared a party wall with the premises. When the pub was open and the bathroom was being used she could hear everything. Ms Taylor was also disturbed by taxis in the road.

- 71.10 In answer to questions put from Mr Wells, Ms Taylor confirmed that she had started a noise log during a previous tenancy. She agreed that when the new tenants arrived they had tried to be helpful and friendly. She confirmed that door staff on Friday and Saturday nights often joined in conversations outside the pub. She confirmed that attempts by the tenants to put sound insulation on the party wall had not improved the noise nuisance.
- 71.11 Mr Bennum set out his representation. Since the late night licence had been in force he had been kept awake by late night noise from the pub. His log always recorded noise that came directly from the pub. The noise included chattering, shouting, mobile phone calls etc. He found it impossible to sleep through the noise and often had to sleep on the floor of his box room, instead of his bedroom. He stressed that Buckingham Road had not been a noisy road before the late licence was granted. He did not accept that the pub was providing a community service. It was providing for people outside of the area.
- 71.12 Mr Bennum referred to an email Ms Parr sent to SASSCO in March and May 2009. She had said she was at the "end of her tether" and also stated that the DPS had been kept awake by noise. This suggested long term persistent problems. He considered the opening hours to be inappropriate in a residential area.
- 71.13 In answer to questions from the Panel, Mr Bennum confirmed that he was disturbed by the noise of people leaving and standing outside the pub on Friday and Saturday nights. This included the noise made by doormen. He was also woken up by the noise of taxis.
- 71.14 Mr Bennum confirmed that he had not witnessed door staff trying to quiet people down or trying to disperse them. He saw them chatting to people.
- 71.15 In answer to questions from Mr Wells, Mr Bennum confirmed that he had been encouraged to call the pub to let staff know if there was a problem. However, he had tried to ring the pub on several occasions and no-one ever answered.
- 71.16 Mr Wells set out the case for the licensees. In answer to questions put by Mr Wells the licensees confirmed that they took over the pub in July 2008. The pub had a late licence and was a civilised place to drink. There had been no rowdy incidents since they had taken over. The pub attracted local residents in the early evening. It attracted late commuters and shift workers after 11.00pm. The pub did not have violent, intimidating drunks.
- 71.17 Ms Parr stated that she and Mr Barnes took their responsibilities very seriously. They had gone to great lengths to deal with the issue of the neighbours. Noise reduction actions to date were set out in their letter of 16 September 2009. This had included sound baffling between the men's' toilets and the neighbouring property. However there had not been positive feedback from Ms Taylor so she had not proceeded to carry out work on the ladies toilets. All the works were paid for by Ms Parr and Mr Barnes.

- 71.18 Mr Wells informed the Panel that the licensees kept a noise control record. They had made their own judgement about acceptable levels and this was negotiable.
- 71.19 Ms Parr confirmed that SASSCO provided doormen from 11.30pm Friday and Saturday nights. Radio support was already in place. Voluntary conditions included no more than 5 people smoking outside any time after 11.00pm. There had been a maximum of five occasions when SASSCO staff had let them down and had not been effective. The pub now had a regular doorman who had a good relationship with the customers. Service from SASSCO had improved immeasurably since May 2009.
- 71.20 Mr Wells referred to Appendix 6 of the licensee's representation which set out instructions to SASSCO.
- 71.21 Ms Parr confirmed that the pub served food from 6.00pm to 9.00pm. Platters could be made up throughout the night. Most people who used the pub were local and only small groups of people used taxis.
- 71.22 Mr Barnes confirmed that a regular taxi firm was used. The taxis did not use their horns. They used ringbacks on mobile phones. Mr Barnes stressed that people came from nightclubs into the area and that there was noise from the station. Night buses and taxis used the road.
- 71.23 The licensees confirmed that the numbers of people in the pub after midnight was variable, but was no more than 40 at a time. It was not possible to remove the handdryers as the pub was contracted to a firm. Paper towels could cause problems with the drains in the men's toilets. Meanwhile, Environmental Health Officers had not found a statutory nuisance.
- 71.24 Ms Parr stressed that the pub would not be viable if it reduced its hours. Doormen were expected to carry out instructions and be friendly to customers.
- 71.25 Ms Parr confirmed that sound baffling had been carried out professionally. Feedback had been negative so further work was abandoned. She would not be averse to exploring that route again.
- 71.26 The Licensing Manager informed the Panel at this point that he had two interests. He knew Ms Parr as she had once worked for the council. He had also recognised Mr Bennum as he had been the previous occupier of Mr Bennum's flat. Both parties present confirmed that they had no objections to him taking part in the review.
- 71.27 The Licensing Manager confirmed that there had been no record of any noise investigations being taken with regard to the handdryers. A more appropriate route to take would be through Environmental Protection Legislation, rather than the Licensing Act.
- 71.28 The Divisional Environmental Health Officer confirmed that she had personally attended residents meetings with the licensees. The noise issue had been discussed at both these meetings. She had made it clear to the complainants that in order to take action

the noise had to be established as a statutory noise nuisance. The noise diaries from Ms Taylor did not demonstrate a statutory noise nuisance.

- 71.29 The Panel agreed at this point that they would not watch a video taken by Mr Bennum as it did not have sound and would not add their perception of the review.
- 71.30 Ms Parr confirmed that half the letters of support were from people not in the immediate area. She explained that she had referred to “the usual suspects” in her email of 30 May 2009 as there had been a number of difficult encounters. Mr Barnes explained that acrimonious emails had been received and Mr Bennum had been unpleasant to doormen and bar staff.
- 71.31 The Licensing Manager made his final summary. The numbers of complaints was 27 over the last three years. There were 40 late night visits. Reviews must not drive a wedge between people. Everyone involved must work in partnership. The Panel should consider the evidence and be proportionate in making their decision. Some matters could be dealt with under Environmental Protection legislation. Action that could be taken by the Panel was set out in paragraph 2.5 of the report.
- 71.32 Ms Taylor stated that she had given the new management a year to improve the situation. She was still frequently woken or kept awake by noises generated by the pub. She was concerned that should the management change again the situation would deteriorate.
- 71.33 Mr Bennum informed the Panel that he could not sleep. He stressed that sleep was a necessity, whereas late light drinking was a luxury. He was not saying that the West Hill was a bad pub. He was saying that his experience and evidence was an inevitable consequence of the late hours. The level of noise was unacceptable. He asked that the West Hill should operate on the same hours as other pubs in the area.
- 71.34 Mr Wells asked the Panel to take no formal action in this case. He considered that there were 2 or 3 households who were supersensitive to noise. He stressed that the pub had excellent licensees. They had done everything manage the expectations of people who lived nearby. The pub was a sensible amenity for people who did not want to drink in the city centre.
- 71.35 **RESOLVED** – That the following conditions be attached to the licence. These conditions had been already offered on a voluntary basis by the licence holder in their representation dated 16th September 2009:
1. No more than 5 smokers to be permitted outside the front of the premises between 23:00 hours and closing.
 2. The premises shall employ an SIA registered door supervisor on Friday and Saturday nights from 23.00 hours until the last customer has dispersed.
 3. A sound limiter shall be installed to control all amplified music to be set to a level agreed by the Environmental Health Department.

The panel took seriously concerns raised connected with the objective of the prevention of public nuisance. They had heard problems concerning external and internal noise. The panel felt that the noise from the bathroom was beyond their remit, but recommended to the licence

holders and the owners of the freehold that they investigate installation of more effective insulation. They further recommended that the licence holders talk to SASCO to see if they could be more pro-active in quietening down people outside the premises. It was agreed informally that if the premises were to stay open late on a week day night after 0100 hours then a door supervisor would probably be employed.

The panel felt it was very important for the premises to keep dialogue open with their neighbours and for both sides to avoid a breakdown in communication. At this stage they did not feel it necessary to reduce the hours of operation for the premises but in the event of a further review then this may be the only option.

The meeting concluded at 1.26pm

Signed

Chairman

Dated this

day of