

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

10.00am 7 DECEMBER 2009

COMMITTEE ROOMS 2/3, BRIGHTON TOWN HALL

MINUTES

Present: Councillors Lepper (Chairman), Hyde and C Theobald

Officers: Jim Whitelegg (Senior Environmental Health Officer), Rebecca Sidell (Lawyer), and Penny Jennings (Senior Democratic Services Officer)

PART ONE

1. TO APPOINT A CHAIRMAN FOR THE MEETING

101.1 Councillor Lepper was appointed as Chairman for the meeting.

2. PROCEDURAL BUSINESS

102a Declarations of Substitutes

102.1 There were none.

102b Declarations of Interest

102.2 There were none.

102c. Exclusion of Press and Public

102.3 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, that 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 100(1) of the Act).

102.4 **RESOLVED** - That the press and public be not excluded.

3. THE WHITE HORSE, CAMELFORD STREET, BRIGHTON

- 103.1 The Panel considered a report of the Assistant Director of Public Safety seeking a review of a premises Licence under the Licensing Act 2003 in respect of the White Horse, 30-31 Camelford Street; Brighton BN2 1TQ (for copy see minute book).
- 103.2 Mr Brown and Mr Foster from Punch Taverns and Mr Aiano, joint lessee of the premises and Mr Oduba the Designated Premises Supervisor(DPS) were present to speak in favour of the premises licence remaining unaltered and retained. Annie Sparks, Environmental Health Manager attended to speak as a responsible authority and Mr Middleton, Mr Lauchlan, Mr Andrews and Mrs Dear attended the hearing to speak as interested parties.
- 103.3 The Senior Environmental Health Officer began his submission by stating that the Premises Licence was being reviewed as a result of representations being received relating to Prevention of Public Nuisance. The Council's Environmental Protection team had called for the review, 12 local residents (8 representations) had written in support of the review application also on the grounds of prevention of public nuisance. He reminded the Panel that the options open to them were to modify the existing conditions on the licence; exclude a licensable activity from the licence; remove the Designated Premises Supervisor; suspend the licence for a period not exceeding three months; revoke the licence; or do nothing.
- 103.4 He reminded the Panel that at an earlier hearing it had been decided (March 2009) to:
1. Remove Live Music and Recorded Music as licensable activities on the licence; and
 2. The modification of conditions so that the following would apply:
 - (i) No karaoke to take place in the premises at any time;
 - (ii) No microphones shall be used at any time;
 - (iii) the front door to be closed, except when used as access/egress, at all times,
 - (iv) the bar gate into St Margaret's Street to be used as a fire exit only, and not as an alternative access/egress to the pub;
 - (v) sale of alcohol to be allowed until 01.00 on Friday and Saturday;
 - (vi) no tables or chairs to be placed in the rear yard;
 - (vii) no heaters to be placed in the rear yard;
 - (viii) a maximum of five people to be allowed to smoke in the rear yard at any one time;
 - (ix) no drinks to be taken into the rear yard area.
- 103.5 The Senior Environmental Health Officer explained that despite strict measures and conditions being put into place following the review hearing in March 2009 noise problems had continued and as result the Environmental Protection team (EP) had submitted a second review application arguing that the premises were not being effectively managed. Initially, they had asked for removal of the DPS and for the opening hours to be brought back into line with the hours for the sale of alcohol. Following the earlier review a new DPS, Robert Oduba had replaced the previous DPS, Simon Thompson on 21 October 2009. However following a meeting with Simon Thompson, the new DPS and Punch Taverns, the EP team still had concerns that even though Simon Thompson had removed himself as the DPS he was still a joint leaseholder and that staffing of the premises remained largely unchanged. In consequence there were serious concerns over the general running and management

of the pub and that the licensing objective of prevention of public nuisance was being undermined and were therefore requesting that the premises licence be revoked.

- 103.6 He explained that this course of action was in line with the approach set out in a document published by the Home Office and DCMS in dealing with problem premises. This document had been adopted by the Licensing Committee in November 2008. This document listed first and second intervention measures, including suspension and tough conditions as a first intervention and in the absence of improvement, enforcement agencies should seek another review and if satisfied that there had been a lack of improvement, the Local Authority should look to revoke the licence as a second intervention measure.
- 103.7 It was further explained that first intervention measures had been taken following the first review (March 2009), this was a second review and the Panel therefore needed to look at second intervention measures which were available to it.
- 103.8 The Environmental Health Manager began her submission detailing further complaints which had been received following the first review and modifications to the licence that had been made at that time and which had culminated in a further visit to the premises. Despite the review in March 2009 complaints about noise had continued, this had included complaints about noise from amplified music from amplified music and noise from customers using the rear yard. On 31 July 2009 the Noise Patrol Team had witnessed loud music coming from the premises and the front door propped open. Customers were observed in the street drinking and talking. The Noise Patrol Team had continued to receive complaints about noise emanating from the premises.
- 103.9 On 13 October 2009, she had visited a local resident opposite the White Horse in response to a further complaint. She had visited the first floor bedroom of the resident and could clearly hear the Kylie Minogue songs "I can't get you out of my head" and "I should be so lucky". The bedroom windows to the White Horse were all closed but the words of the songs being played could be heard clearly. As she sat on the bed the words of "Simply the Best" by Tina Turner could be heard. On leaving the house and standing on the pavement the vocals to the songs remained clearly audible, yet the doors and windows were still closed. The vocals had also been clearly audible when she had stood 20 metres further down the road outside 30 Camelford Street. Recorded music was clearly being played and was not "background" or "incidental" music as permitted by the modified licence.
- 103.10 Following this visit and her review submitted on 14 October 2009, a meeting had taken place at the premises on 9 November 2009. The meeting had included Simon Thompson, the former DPS, Robert Oduba, the current DPS and Stuart Brown of Punch taverns. At that meeting Simon Thompson had made it clear that although he was no longer DPS, he would remain as a lease holder and would therefore still be involved with elements of the business. It had been confirmed that Roger Aiano was to remain at the premises and would take on additional duties. Mr Aiano had been on the premises when the original complaints had been made to the local authority and had accepted a simple caution concerning the breach of the noise abatement notice served on him in November 2008.

- 103.11 During the meeting on 9 November the Environmental Health Manager had been extremely concerned that even though Simon Thompson was no longer DPS he was still involved with the operation of the business and those employed she was not confident that removing him as DPS would ensure that public nuisance was prevented. She was therefore requesting that the premises licence be revoked.
- 103.12 The Chairman asked the interested parties if they had any questions regarding the statement made by the Environmental Health Manager. All parties confirmed that they had none. However, Mr Brown of Punch Taverns requested that they be permitted a 5 minute adjournment to enable them to go through the diary of incidents appended to the submitted report and regarding the modifications applied to the licence following the review in March 2009. The Chairman agreed and also checked that all parties had received all relevant information in respect of that days meeting.
- 103.13 Mr Middleton spoke on behalf of neighbouring objectors and stated that notwithstanding the earlier review problems and nuisance had continued to occur. There had been a flagrant disregard for the needs of residents as evidenced by continued complaints regarding the manner in which the premises were run. There had been a catalogue of broken promises as agreements and undertakings given had not been kept to.
- 103.14 Mr McLachlan concurred, notwithstanding on-going problems connected to poor management the new DPS had only been appointed recently in the run up to this second review and there had been an improvement, however this had occurred in the period immediately prior to the first review, therefore there was little confidence that this would be sustained.
- 103.15 Mr Andrews stated that improvements had been effected in the past but had not been sustained, residents feared that overall the situation remained unchanged. Life had continued to be very unpleasant for residents as a result of the complete and continuing failure for the premises to be properly managed. There had been an unwillingness on the part of the pub's management to engage with residents and a number of complainants had been traced and had been subjected to threats and intimidation.
- 103.16 Mrs Dear stated that her property was located in Margaret Street beyond the rear yard of the premises. Whilst there had been improvements to the levels of noise experienced, smoking and noise did still emanate from the rear and tables and chairs continued to be stored/moved in close proximity to the rear flank wall.
- 103.17 Mr Foster gave his representation on behalf of Punch Taverns who owned the freehold on the premises. Following the adjournment which had been requested and approved by the Chairman he explained that he would confine his comments to issues to be raised on behalf of Punch Taverns. Those operating the premises on a daily basis would make their own representations.
- 103.18 Mr Aino explained that although Simon Thompson's name still appeared on the lease he now took no part in the day to day running of the premises. He had taken a strong lead in trying to turn the premises around and it was very regrettable that the incident that had landed them before the Panel that had occurred during a 15 minute period

when he had been away from the premises. The particulars surrounding this event were set out in the paperwork submitted that day and the Member of staff concerned had been dismissed. He recognised that although they had tried hard they had not always got it right. Measures were in place to ensure that such an incident never occurred again.

- 103.19 Mr Oduba referred to the measures that he had taken and would continue to take since taking over the running of the premises, he was in agreement with and Mr Aino regarding how the premises should be run and it was intended that there would be a shift towards re-branding the pub as primarily an eating establishment. He hoped to be given the opportunity to continue in that vein.
- 103.20 Mr Aino stated that no tables and chairs were placed in the rear yard area for use but were stored in an area specifically dedicated for that purpose.
- 103.21 Panel Members had the opportunity to ask questions and Councillor C Theobald asked questions regarding the conditions placed on the licence following the first review and referred to the diaries of events which had been kept. It was confirmed that this latter information was not included in the paperwork submitted that day but had been submitted to the Environmental Health Department.
- 103.22 The Chairman and Councillor Hyde referred to the fact that notwithstanding the enormity of the measures taken as part of the earlier review and enquired why these very serious matters had not been attended to at an earlier stage. Mr Aniano stated that the facts concerning some of the allegations were disputed and that measures had been put into place to ensure that any past failings had been addressed.
- 103.23 Local objectors had the opportunity to ask questions of the applicants and both Mr McLaughlin and Mr Andrews asked questions relating to recent incidents including those during the pride weekend and more recently for which supporting photographic evidence had been submitted. Mr Aino stated that he refuted substance of those allegations and on that basis Mr McLaughlin and Mr Andrews stated that they did not consider it would be productive to ask any further questions.
- 103.24 The Environmental Health Manager sought confirmation regarding the times during which Mr Aino had been present at the premises and that he had been accepted a caution at the premises earlier that year and he confirmed that he had. No further questions were put.
- 103.25 Mr Foster and Mr Brown gave their submissions stating that as the situation had now reached such a level of severity it was proposed that action might be considered to rescind the lease and for it to revert to Punch Taverns. They also requested that the Panel were mindful of government guidance on the subject and of the measures which had been undertaken to improve the current situation. The Chairman responded stating that whilst the Panel received legal advice and were all mindful of all relevant legislation the decision was ultimately theirs and theirs alone.
- 103.26 The Chairman referred to the current position and asked why Punch Taverns were contemplating intervention action at this very late stage. Mr Foster responded that although Punch had kept a watching brief day to day running of the premises was left

to their licensees and it had been hoped that effective measures to improve the situation would have been taken at an earlier stage.

103.27 The Chairman explained that in reaching their decision the Panel had been mindful that as this licence was before Members for review for the second time within 6 months (a situation which had not to their knowledge happened before), this constituted a very serious matter. Their guiding principles were to uphold the Licensing Objectives and in particular here the prevention of public nuisance. They also considered the Statement of Licensing Policy and Statutory Guidance. The Panel had given careful consideration to the options available them and had determined as follows:

- No action - given the severity and extent of the issues raised, the Panel did not consider that this was an option;
- Excluding some elements of the licensable activities - this had been done as part of the earlier review, but had been ignored, further breaches had taken place and complaints had been received;
- Modification of Conditions – this had also occurred following the decision taken as part of the previous review; notwithstanding this further breaches had taken place since that earlier review (March 2009);
- Change of Designated Premises Supervisor – this change had been effected very recently following the earlier review in March 2009;
- Suspension of the licence for a period not exceeding 3 months – there had been continued poor management of the premises, which had not been addressed after the first review and the Panel were not confident that the current management would uphold the licensing objectives and there were no guarantees that the necessary changes to management personnel/management of the premises would be made within the period of any suspension,
- Revocation – Ultimately, the Panel were of the view, not a step which they took lightly, nor without considerable deliberation, that this course of action was necessary and proportionate having considered all of the circumstances in this particular case and the need protect and promote the licensing objectives.

The decision of the Panel was therefore to revoke the licence.

103.28 **RESOLVED** - That having duly considered and reviewed the licence of the White Horse, Camelford Street, Brighton BN2 1TQ, that the said licence be revoked in order to uphold the licensing objectives.

Note: The Legal Adviser to the Panel confirmed that the licence holders and licensees would receive formal notification of the Panel's decision in the very near future and this would be accompanied by details of the appeals procedure available to them under Section 181 and schedule 5 of the Licensing Act 2003.

The licence holder/licensees were informed that all appeals must be made to the Magistrate's Court, Edward Street, Brighton within 21 days of deemed delivery of the decision letter. Delivery was deemed to have been effected on the second working day after posting.

The meeting concluded at 1.20pm

Signed

Chairman

Dated this

day of