

LICENSING ACT 2003 SUB-COMMITTEE

Wednesday, 8 September 2010

Present:

Councillors J Salter
S Taylor

R Wilkins

29 **APPOINTMENT OF CHAIR**

Resolved - That Councillor Sue Taylor be appointed Chair for this meeting.

30 **MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members were asked to consider whether they had any personal or prejudicial interests in connection with the item on the agenda and, if so, to declare them and state what they were.

No such declarations were made.

31 **MILNERS, 59 MILNER ROAD, HESWALL**

The Director of Law, HR and Asset Management reported upon an application that had been received from Merseyside Police for the review of a Premises Licence in respect of Milners, 59 Milner Road, Heswall, under the provisions of the Licensing Act 2003.

The premises currently have a Premises Licence which allows the licensable activities as set out in the report.

A copy of the Premises Licence setting out the hours and conditions attached to the licence was available.

The Director advised that the Sub-Committee may, having regard to the application for review and any relevant representations, take such of the following steps as it considered necessary for the promotion of the licensing objectives:

- Modify the Conditions of the Licence.
- Exclude a licensable activity from the scope of the Licence.
- Remove the Designated Premises Supervisor.
- Suspend the Licence for a period not exceeding three months.
- Revoke the Licence.

The Licensing Authority may decide that no action would be necessary if it found that the review did not require it to take any steps necessary to promote the licensing objectives.

Fourteen representations had been received from local residents in respect of this application that supported the application made by Merseyside Police. The

representations related to anti-social behaviour and public nuisance within the immediate vicinity of the premises and noise nuisance emanating from the premises. A representation had been received from Ward Councillor Andrew Hodson who had received a number of complaints from his constituents in respect of these premises. Copies of the representations were available.

A representation had also been received from Gosschalks Solicitors on behalf of Enterprise Inns plc as an interested party. Enterprise Inns plc is the freehold owner of the premises which was subject of a lease agreement in favour of Marie Earnshaw. A copy of the representation was available.

Sergeant Jenkins attended the meeting together with Sergeant Parker and Constable Cottrell. Sergeant Jenkins advised that the grounds for review were in relation to the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm following a number of incidents that had occurred inside and outside the premises.

Mr Earnshaw attended the meeting with his mother, Mrs Earnshaw and Mr Dadds, Solicitor.

Also in attendance were Councillor Andrew Hodson, Mrs Goulding, local resident and Mrs Piercy who was representing her daughter Mrs Sharrocks.

The Licensing Officer reported that all documentation had been sent and received and that further documentation had been recently submitted.

Sergeant Jenkins reported that the premises had been under the tenancy of Mr Earnshaw since 8 April 2010 and had now been called into review. He informed Members that the premises had a negative history and had had six different Designated Premises Supervisors since June 2007 and that there had been 27 incidents at the premises from 19 July 2002 to 1 July 2010 and 48 incidents from April 2010 to September 2010 whilst under the management of the current Designated Premises Supervisor. He referred to the list of incidents which was included within his report and which also included statements from residents and officers. He advised that the complaints received affected the quality of life for local residents and related to excessive noise, disorderly behaviour, drug taking, alleged stay behinds, drunkenness, underage drinking, loud music and breaches of licensing conditions.

Sergeant Jenkins informed Members that he had discussed some of the problems with the Designated Premises Supervisor and reminded him of the licensing objectives and his responsibilities, however, subsequent to this discussion a major incident had occurred on 5 June 2010 during which all staff in Heswall Police Station were required to disperse 80-100 youths outside the premises and it had been clear that the Designated Premises Supervisor could not control the situation. Sergeant Jenkins warned him that he had to take control on 14 June 2010 and as there had been no reduction in the number of complaints received he decided the premises must be taken to review.

Sergeant Jenkins felt that the needs of the community were paramount. He therefore requested that a number of conditions be attached to the Premises Licence or that the Premises Licence be revoked.

Sergeant Parker referred to the number of police staff on duty at any one time and the impact these premises had on the area of Heswall due to the need to police the area surrounding the premises.

Sergeant Jenkins and Sergeant Parker responded to questions from Members of the Sub-Committee and the respondent's solicitor.

Mr C Clayton, Acting Principal Licensing Officer, reported that it was his responsibility to co-ordinate enforcement action and as such he had arranged for Mr Shaw, Enforcement Officer, to visit the premises on 12 May 2010 in order to meet with the Designated Premises Supervisor and remind him of the conditions attached to the Premises Licence. This had been undertaken and subsequent to a further visit to the premises on 21 May 2010 a breach notice was issued due to certain conditions not having been complied with. Mr Clayton reported that he had continued to receive a large number of complaints regarding the premises.

Mr Clayton responded to questions from Members of the Sub-Committee and the respondent's solicitor.

Mr Dadds, Solicitor referred to the White Board document of Merseyside Police which had been distributed to Members. He pointed out a number of dates when there had been no actual incidents at the premises. He also stated that there had been contradictions in some of the complaints made. He referred to the guidance issued under Section 182 of the Licensing Act 2003, in particular paragraph 2.39 which refers to matters beyond the vicinity of the premises which are for the personal responsibility of individuals. Mr Dadds invited the comments of Sergeant Jenkins who responded to the solicitor's comments regarding the fact that allegations had been made and that it would be a matter for Members to decide.

The Sub-Committee adjourned at 12.50 pm and reconvened at 1.40 pm.

Mrs Goulding informed Members that she lived adjacent to the premises and advised that there had been disruption at the premises since the current Designated Premises Supervisor had been in place. She referred to a number of incidents of noise and disturbance that she had experienced, including an incident on the evening of 1 June and early hours of 2 June 2010 when she was awoken by a number of youths on the roof terrace of the premises. She stated that the Designated Premises Supervisor had a total disregard for neighbours and there had been many breaches of the conditions of the Premises Licence. She felt that local residents should not have to put up with the behaviour that occurred at the premises.

On behalf of Mrs Sharrocks Mrs Piercy stated that the Designated Premises Supervisor had a total disregard for his neighbours. She reported that her daughter's health had suffered as a consequence. She read out a statement prepared by her daughter and urged Members to take this into consideration.

Councillor Hodson reported that he had been a Councillor in Heswall ward for 18 years and had never seen a history at any premises such as this that had plagued its neighbours. He advised that he had started to receive complaints just after April 2010. He referred to the four licensing objectives and the amount of police hours spent at the premises and felt that the Designated Premises Supervisor had demonstrated incompetence and contempt towards authorities.

Mrs Goulding responded to questions from Members of the Sub-Committee.

Mr Dadds reported that he would be content to accept that some of the proposed conditions by Merseyside Police be attached to the Premises Licence. He stated that the current Designated Premises Supervisor would be removed and Mrs Earnshaw would become the Designated Premises Supervisor within the next seven days. He submitted that the Designated Premises Supervisor stated that he was not on the roof during the incident referred to by Mrs Goulding. He added that door supervisors were now in place at the premises and felt that most complaints were regarding noise dispersal, however, he felt that neighbours of the premises had to accept some noise levels. He referred to an action plan that would now be in place at the premises which would include a dispersal policy and other measures to improve the premises. He stated that there was no evidence that would require a revocation of the Premises Licence.

Mr Dadds responded to questions from Members of the Sub-Committee and Sergeant Jenkins, Councillor Hodson, Mrs Piercy and Mrs Goulding.

Members noted and welcomed the willingness of the Premises Licence Holder to put in place measures to prevent noise nuisance emanating from the premises, including: a noise limiter, the installation of a further set of internal doors at the rear of the premises and if necessary the installation of acoustic curtains.

Members of the Licensing Act 2003 Sub-Committee considered evidence from Merseyside Police in respect of numerous complaints from local residents concerning levels of noise and incidents of anti social behaviour linked directly to the premises. Members received evidence from local residents regarding their experiences of being disturbed and adversely affected by the noise nuisance and anti social behaviour emanating from the premises. Members also considered representations from the Premises Licence Holder's legal representative in respect of the management of the Premises and the evidence provided by local residents and Merseyside Police.

Members noted a significant increase in reported incidents of public nuisance and anti social behaviour since David Earnshaw had become the Designated Premises Supervisor at the Premises in April 2010. Members also heard evidence of breaches of the Premises Licence and actions taken by both Merseyside Police and Licensing Officers to assist the Designated Premises Licence Holder to comply with the conditions of the licence. Members heard evidence from Merseyside Police that despite a number of assurances given by the Designated Premises Supervisor to comply with conditions, breaches of those conditions continued to occur and local residents continued to log complaints of disturbance and anti social behaviour.

In determining the matter Members also took into account oral and written evidence provided by residents detailing their personal experiences in relation to noise nuisance and anti social behaviour emanating from the premises. These representations were supported by a local Ward Councillor. Members also noted that residents provided evidence that they were continuing to experience problems with the premises despite the fact that an application to review the Premises Licence had been made and that an action plan had been developed to improve the management of the premises.

Members noted that Maria Earnshaw, the mother of David Earnshaw, stated that she had been taking a more active role in the management of the premises in the last 6-8 weeks and was now being proposed as the Designated Premises Licence Holder. Members heard concerns from residents that they had continued to experience noise and disturbance from the premises during this time despite her involvement.

Members considered the representations made by the Premises Licence Holder's legal representative that there had been recordings made by Merseyside Police on a number of occasions stating that there were no incidents of note at the premises, or that the premises were quiet, Members balanced this evidence against the personal experiences of residents living within the vicinity of the premises.

Members considered that the evidence presented reflected poor management and a disregard to the requirements of the Licensing Act 2003 which had resulted in a significant negative impact on the Licensing Objectives in particular, the Prevention of Public Nuisance.

The evidence presented gave serious concerns to Members of the Sub Committee regarding public nuisance and despite actions taken by both Merseyside Police and Licensing Enforcement officers residents had continued to experience nuisance from the premises and conditions had continued to be breached. Members considered that insufficient evidence was provided to demonstrate that a robust management structure was in place and had concerns regarding the evidence provided by the proposed Designated Premises Supervisor that it was her intention to only be at the premises on two or three nights of the week.

In determining the application the Licensing Act 2003 Sub-Committee had regard to the Licensing Objectives, the Council's Statement of Licensing Policy and the Department of Culture, Media and Sport Guidance issued under section 182 of Licensing Act 2003.

Resolved -

(1) That in accordance with Regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.

(2) That the Premises Licence be modified as follows:

Supply of Alcohol

Monday to Saturday	11:00 to 23:00
Sunday	12:00 to 23:00

Hours Open to the Public

Monday to Saturday	11:00 to 23:30
Sunday	12:00 to 23:30

Regulated Entertainment (Exhibition of Films, Indoor Sporting Events, Live Music and Recorded Music)

Monday to Saturday	11:00 to 23:00
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Sunday

12:00 to 23:00

(3) That the following conditions be attached to the Premises Licence:

- **The current Designated Premises Supervisor, Mr David Earnshaw, to be removed from the Premises Licence.**
- **The Designated Premises Supervisor at these premises must hold a BIIAB Level 2 National Certificate for Designated Premises Supervisors from 15 October 2010**
- **The Premises must implement a Challenge 25 policy and display adequate posters relating to this policy.**
- **There must be 2 SIA registered doormen employed from 20:00 to 23:30 hours on Friday and Saturday.**
- **At least 2 SIA registered doormen must be employed whenever there is regulated entertainment or whenever a major sporting event is being shown. A major sporting event would include any high profile football match, rugby international or boxing tournament.**
- **Door supervisors must wear hi visual fluorescent jackets.**
- **A noise limiter device must be installed in the premises and set to a level, in consultation with officers from Wirral Borough Council's Environmental Health Department, to prevent noise nuisance being caused to local residents.**
- **Management shall ensure that inspections of the outside area, including the car park and beer garden, are undertaken every 30 minutes in order to check that the areas are not overpopulated and there is no excessive noise emanating from the areas concerned or the premises building. A record of these checks must be maintained and available for inspection by an authorised officer.**
- **Management must ensure that the front of the premises is kept clear of litter and rubbish up to a radius of 25 metres from the premises building.**
- **The car park and beer garden must be kept clear of broken glasses and debris.**
- **There must be no 18th Birthday Party functions held at the premises.**
- **A drug safe must be installed and utilised when necessary at the premises.**
- **The premises must have an appropriate and relevant dispersal policy that seeks to ensure customers leave the premises in a manner that does not cause disturbance to local residents.**

- **The Premises must promote the use of taxis that provide a call back facility.**
- **Any transport provision supplied or organised by the premises must not cause a nuisance to neighbours.**
- **The Designated Premises Supervisor must make available to residents a contact mobile number that residents may call if they need to report to the management of the premises that they are experiencing a nuisance caused by the premises.**
- **CCTV coverage must include the beer garden.**