

## **Licensing Sub-Committee**

**Minutes** of a meeting of the **Licensing Sub-Committee** held in the **Warren Room, Lewes House, 32 High Street, Lewes** on **Monday, 15 November 2010** at 10.00am

**Present:**

Councillor J F Daly (Chair on election)  
Councillors M A Cutress and L M Hallett

**Officers Present:**

Mr T Albright, Environmental Health Manager  
Mrs R Allan, Scrutiny and Committee Officer  
Mr G Clark, Licensing Officer  
Ms J Fletcher, Trainee Solicitor  
Mr R Harris, Senior Legal Assistant  
Mr T Hayward, Committee Officer  
Mr E Hele, Principal Environmental Health Officer  
Ms S Lindsey, Assistant Licensing Officer  
Mr A Still, Senior Environmental Health Officer

**Applicant Attending:**

Mr N Neef

**Representing the Licence Holder:**

Mr K Clark, Business Relationship Manager, Punch Taverns PLC

**Representative of the Licence Holder:**

Mr M Butt, TLT Solicitors

**Premises Supervisor Attending:**

Mr R Thomsett, Premises Supervisor, The Cinque Ports public house

**Representors Attending:**

Mr G Cox  
Mr R Mikolay  
Mrs L Stafford  
Miss M Thompson

Minutes	Action
<p><b>1 Election of Chair of the Sub-Committee</b></p> <p><u>Resolved:</u></p> <p><b>1.1</b> That Councillor J F Daly be elected Chair of the Sub-Committee for this meeting.</p>	
<p><b>2 Application for the Review of the Premises Licence for Cinque Ports 49 High Street Seaford BN25 1PP</b></p> <p>Those attending the hearing introduced themselves and the procedure under the Licensing Act 2003 was read out to all parties present.</p> <p>The Environmental Health Manager presented Report No 237/10 and highlighted the main points.</p> <p>The Sub-Committee considered Report No 237/10 relating to the Review of the Premises Licence in respect of The Cinque Ports public house, 49 High Street, Seaford. The Licence holder for the premises was Punch Taverns PLC and the tenant and Designated Premises Supervisor (DPS) was Mr Robert Thomsett.</p> <p>The Cinque Ports was a medium to small size public house which was situated in an area of residential properties, some business premises and retail outlets in the old Seaford High Street area near to the town centre and the main shopping outlets. It had a ground floor open plan bar to the front and to both sides with a rear lounge area. To the side was a small external covered yard with double doors that was equipped with tables and chairs which served as the smoking area and for the consumption of alcohol. Entrance to the premises was at the front from the High Street pavement. There was a lobby and doors between the street and bar area.</p> <p>The Review had been called, under the Licensing Act 2003, by Mr Nicholas Neef, 56 High Street, Seaford, who was an interested party namely, a person who lived in the vicinity of the premises. His complaint was relevant and was not vexatious, frivolous or repetitious.</p> <p>The Licensing Objectives which were the subject of the review related to the prevention of crime and disorder and the prevention of public nuisance.</p> <p>The Council's Licensing Officer had visited the premises as part of his licensing duties on 24 January 2008 and on 21 June 2010 and had undertaken a formal inspection of the premises and licence. The inspections were satisfactory and the regulatory requirements and conditions were found to be in order other than in respect of minor</p>	

infringements relating to the display of posters.

As a result of those inspections, the Licensing Officer had considered that there were some inappropriate conditions that were attached to the licence and advised the tenant and DPS accordingly. The Licensing Officer had recommended a minor variation application to remove and amend the operating schedule conditions under the licensing objectives as appropriate.

On 2 September 2010, the Licensing Officer had visited the premises and had spoken with the tenant and DPS regarding a complaint which had been received from Mr Neef who lived opposite the premises. The complaint related to the outside yard area which was used for smoking and the excessive noise nuisance and poor behaviour of pub customers that used that area especially late at night. The DPS and the Licence holders had been sent a letter which detailed the Licensing Officer's visit and his concerns about the management of the premises and the outside area. A copy of that letter was set out at Appendix 6 to the Report.

The current licence for the premises had been granted on 1 August 2005 following an application for conversion and simultaneous variation under the provisions of the Licensing Act 2003. The variation extended the licensing hours for alcohol and provided for additional licensable activities under regulated entertainment. There were no objections by residents in the vicinity or authorities to the application by Punch Taverns and, subsequently, the current tenant was placed on the licence as the DPS on 13 December 2006.

The premises served substantial food/table meals throughout the day and early evening together with the normal pub drinking environment through to closing time. It had regular entertainment at weekends by way of live bands, recorded music and karaoke which took place in the main front bar area.

Since the introduction of the smoking ban in July 2007, the small side yard area had been refurbished with heaters and furniture in order to accommodate customers who smoked. It was well used by smokers and non smoking customers alike throughout the year. The Licensing Officer considered that, by reason of the smoking ban and its close proximity to the main bar, the yard area had become a 'de facto' extension of the bar area. It could be particularly busy during weekend evenings and, with the double doors being kept open, allowed music and other noise from the premises to go out onto the street which added to the potential for public nuisance.

The Licensing Officer was aware of some complaints from residents in the surrounding properties and had consulted with the DPS on several occasions since he arrived at the pub in order to offer advice and guidance to minimise the risk of further complaints with particular regard to the outside smoking area.

The Premises Licence currently had a condition under Public Nuisance which stated that 'no consumption of alcohol or licensable activities to take place externally after 11.30pm with the exception of bank holiday Friday,

Saturday and Monday after 12.30am and bank holiday Sunday after 12 midnight.' Such condition was added to the Licence by the Licence holders in May 2007 by way of a Licence variation in order to support the public nuisance licensing objective and the use of the outside smoking area. It appeared from neighbour's comments and the conduct of customers late at night that the condition was not being enforced with regard to the consumption of alcohol in the yard area after 11.30pm.

The Environmental Health Manager drew attention to the various licensable hours of The Cinque Ports, including those for the sale, by retail, of alcohol and the provision of live and recorded music, as set out in the Report.

The Council had produced a Statement of Licensing Policy in order to comply with its duties and powers under the Licensing Act 2003. It covered the licensable activities for retail sale of alcohol, regulated entertainment and late night refreshment which were the activities authorised by the Licence for The Cinque Ports.

The Policy aimed to secure the safety and amenity of residential communities, help to ensure a sustainable environment, and provide regulation of the cultural/entertainment industry and to promote the four Licensing Objectives of the Act, namely;

- Prevention of crime and disorder;
- Public Safety;
- Prevention of public nuisance; and
- Protection of children from harm.

In each case that arose as a consequence of representations, the Policy stated that the Council would:

- (a) Consider the potential for public nuisance, crime and disorder and/or danger to public safety associated with the style, characteristics and activities of the business involved and the rights of local residents to peace and quiet;
- (b) Examine the potential steps which could be taken to reduce the risk of public nuisance, crime and disorder and/or danger to public safety, particularly in areas of dense residential accommodation; and
- (c) Consider restricting the hours of trading only in cases where there are good grounds for believing that the licensing objectives will be or are being undermined.

National guidance which had been issued under Section 182 of the Licensing Act 2003 referred to the powers of the Licensing Authority on the determination of a review. That Act provided a range of powers for the

licensing authority on determining a review that it might exercise where it considered them necessary for the promotion of the licensing objectives.

The licensing authority might decide that no action was necessary if it found that the review did not require it to take any steps necessary in order to promote the licensing objectives. Additionally, there was nothing to prevent a licensing authority from issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time.

In instances in which the licensing authority considered that action under its statutory powers was necessary, it might take any of the following steps:

- to modify the conditions of the Premises Licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- to remove the DPS, for example, because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding 3 months; and/or
- to revoke the licence.

In deciding which of the powers to invoke, it was expected that licensing authorities should, so far as was possible, seek to establish the causes of the concerns which the representations had identified. The consequential remedial action taken should, generally, be directed at those causes and should always be no more than a necessary and proportionate response thereto.

Modifications of conditions and exclusions of licensable activities could be imposed either permanently or for a temporary period of up to three months. Licensing authorities could tailor their own conditions or draw from the model conditions which were contained in the Guidance.

Paragraph 7 of the Report set out details of the Licensable Activities which were authorised by the Premises Licence in respect of The Cinque Ports and paragraph 8 set out details of the Conditions that were consistent with the Operating Schedule.

In support of his application for the review of the Premises Licence, Mr Neef had submitted several details relating to the public house namely:

1. Before the new Licensing Laws had come into effect and the smoking ban had been introduced, the premises closed at 11.00pm;
2. In the past few years, under the present landlord, there had been excessive noise from patrons who occupied the smoking area, live bands, karaoke and a disregard for the licensing laws;
3. The smoking area was frequently occupied up to and beyond 12.45am with people swearing laughing and women screaming well into the night and early morning. It was impossible to sleep before 1.00am due to the noise which was created by people in that area of the premises;
4. Live bands performed at the premises which, he felt, was not designed to host such activities, it was impossible to hear television above the noise that was created. The double doors to the smoking area were kept open and, therefore, the shutting of the premises windows had little effect. Live bands finished playing by 11.00pm to 11.30pm after which it was common for a juke box to be in use, the volume of which was turned up above a normal level with the resulting noise level continuing well past midnight;
5. Six video tape recordings which demonstrated the level of noise that was created – each recording lasted for approximately four hours;
6. The main concerns related to the noise which emanated from the smoking area until the early hours and excessive noise from live bands and karaoke. There were also minor irritations relating to taxis, people who wandered in the street and sat on Mr Neef's front wall, the use of telephones and general noise that was created by revellers when they vacated the premises late at night; and
7. In the circumstances, Mr Neef felt that the premises should not hold a late licence in a largely residential area. The activities which were undertaken at the premises were clearly causing residents both mental and physical distress.

Diary sheets, which covered the period from 3 September 2010 to 17 September 2010, had been provided to the applicant prior to the submission of the review application in order that he could detail the record of alleged disorder and nuisance from the premises. Those sheets, together with the review application and supporting evidence, were set out at Appendix 1 to the Report.

In accordance with Regulation 38 of The Licensing Act 2003 (Premises Licenses and Club Premises Certificates) Regulations 2005, a suitable notice which advertised the review was attached to the premises and was displayed on the Council's notice board in Lewes. Such notice had also been placed on the Council's web site for the statutory 28 day period from 23 September 2010. A copy of the notice was set out at Appendix 2 to the Report.

Letters had been received within the relevant 28 day notice period from people who wished to make representations about the application, copies of which were set out at Appendix 3 to the Report. There were eight written representations that concerned crime and disorder and public nuisance from residents who lived in the vicinity. The letters were considered to be relevant and were not vexatious or frivolous.

Two letters had been received from three Seaford residents who did not reside in the vicinity of the premises. They provided support for the public house and highlighted the good work that was undertaken by it in support of the community. Copies of those letters were set out at Appendix 4 to the Report.

The Council had made representations under the public nuisance objective relating to the premises, the evidence and supporting documentation for which was set out at Appendix 5 to the Report.

Mr N Neef, the Applicant, then showed an extract of one of the video tape recordings that he had made which demonstrated the level of noise that could be heard from approximately 15 metres away from the The Cinque Ports on those occasions and had been made on Friday, Saturday and Sunday evenings on two consecutive weekends in September 2010.

Mr Neef stated that:

- the base sound which was created by the music from the premises was particularly audible from inside his home;
- Despite the windows at The Cinque Ports being closed at times when music was being played, the sound from such music could be heard from the open doors to the smoking area;
- He had submitted a representation to the Council approximately two years ago when a Retrospective Planning Application was submitted in respect of the smoking area at the premises; and
- As recently as last weekend (ie 13/14 November 2010), the police had been called by one of Mr Neef's neighbour's who had complained to them about the noise that was being created by the premises.



Mr M Butt, Representative of the Licence Holder, stated that:

- The evidence that was set out in the Report suggested that there were few good points that could be attributed to the premises however, he considered that it was a popular public house which provided a service to the community; and
- Many of the problems that were identified in the Report were due to poor levels of vigilance by the staff who worked at the premises and had arisen from the introduction of the smoking ban in July 2007.

Mr Butt suggested several conditions that the Sub-Committee could attach to the existing Premises Licence which, if implemented, would help to mitigate the level of noise that was created at the premises. Those suggested conditions related to:

- The Provision of Live Music:
  - Restrict performances to once per month on a Saturday or Sunday – to be terminated at 11.30pm;
  - Premises to apply for a Temporary Event Notice for additional performances during the Seaford Live music festival; and
  - Premises staff to measure the level of noise outside the premises every 30 minutes during the licensable hours and take appropriate action to prevent instances of public nuisance to those living in the vicinity thereof;
- Karaoke and recorded music (excluding the playing of the juke box) which was less noisy than the playing of live music:
  - The sound level to be agreed with the Director of Planning and Environmental Services as, in light of the relatively small size of the premises, it was inappropriate for a sound limiting system to be introduced; and
  - All karaoke and recorded music to be concluded at 11.30pm;
- Smoking Area (without such area, customers would stray out onto the street in order that they could smoke):
  - No drink to be taken into the smoking area after 10.30pm which, if implemented, would help to prevent the area being used as an extension to the public house, would reduce the number of people in that area and, therefore, would reduce the



amount of noise; and

- The doors from the bar to the smoking area to be kept closed during times when regulated entertainment was being conducted – one member of the premises' staff to be appointed to ensure that such closure was maintained during those times.

Mr Butt felt that the time to which the premises was licensed to sell alcohol, namely 12.00 midnight, should be retained as any reduction in the number of such licensable hours would result in a reduction in the level of income that could be achieved at the premises.

In response to a Councillor's issue that the conditions suggested by Mr Butt did not seem to address concerns that some of The Cinque Ports customers often left those premises and then sat on its neighbours' walls, the DPS confirmed that he requested his customers to not sit on those walls and to not make a noise. Mr Butt further suggested that a sign could be displayed at the premises which reinforced that request and that a condition could be added to the Premises Licence which indicated that drinks needed to be consumed on the premises by no later than 10.30pm.

In response to a Councillor's issue relating to the provision of an additional set of doors to be installed between the bar and the smoking area, Mr Butt suggested that such provision should not be included as a condition on the Premises Licence as the cost of any such work had not been calculated. However, he suggested that such provision could form part of a Noise Management Plan in respect of the premises.

Mr Neef felt that the provision of additional doors would not make much difference to the level of noise, much of which emitted from the front part of the premises.

The Environmental Health Manager stated that the Premises Licence currently required a member of staff to regularly monitor sound levels outside the premises and that drinks were prohibited outside the premises after 11.30pm. However, Mr Butt felt that the requirement relating to the monitoring of sound levels needed to clearly state the frequency and location of those undertakings. He believed that it was not practical to prevent noise from passing beyond the boundary of the premises and that it was not a good idea for untrained staff to be operating noise metering equipment. He instead felt that common sense should be used to monitor as to what was, and what was not, an acceptable level of noise outside the premises.

The Senior Environmental Health Officer drew attention to some suggested conditions which he had made that could be included on the Premises Licence, details of which were set out at Appendix 5 to the Report. He also stated that, in July 2007, a Noise Abatement Notice had been served on the premises and, in November 2008, an updated Noise Abatement Notice was

served.

In 2009, following a period during which the situation at the premises had seemed to improve, the Notice was not updated however, in 2010, the situation had again worsened which had resulted in the current Review of the Premises Licence.

Mr Neef reported that, on occasions when there were live bands performing at The Cinque Ports, the time at which customers subsequently left the premises often resulted in noise being heard in the street until 12.45am. He therefore felt that the performance of live bands should be restricted to end at 11.00pm.

In response to a question from Mr Neef relating to the consumption of alcohol in the smoking area, the Licensing Officer confirmed that the Premises Licence included that area and, therefore, the consumption of alcohol in that part of the premises was permitted.

The Sub-Committee withdrew in order to consider its response to the Review.

The Sub-Committee returned and the decision was delivered as follows:

Resolved:

- 2.1** This Sub-Committee has listened very carefully to Mr Neef's case and to the response and submissions of Punch Taverns. The Committee has also taken into account the Licensing Officer's report, the written and oral representations that have been received and the Memorandum and representation from Mr Still who is the Council's Area Environmental Health Officer.

DPES

In reaching its decision, this Sub-Committee has taken into account the licensing objectives, in particular, the need to prevent public nuisance. It has also taken into account the Council's own licensing policy, Government Guidance and the nature and location of the licensed premises.

Having heard and considered the evidence in this matter, this Sub Committee is satisfied that public nuisance is not being adequately or properly prevented at the Cinque Ports Public House and that it is necessary to impose further conditions in order to promote the public nuisance licensing objective.

The conditions that will be imposed are as follows:-

1. All regulated entertainment is to finish at 23.00 hours;
2. Live music is to be limited to one event per month either on a Friday or a Saturday. (Tens applications will be permitted during Seaford Live);

3. Regular sound checks are to be conducted by staff at the premises including outside and at least once every half hour. A written record shall be made of these checks in a log book kept for that purpose and shall include the time and date of the checks, the name of the person making them and the results of those checks including any remedial action taken;
4. A noise management plan shall be agreed with the Council's Environmental Health Department. All recorded music is to be played at a level agreed by that Department;
5. There shall be no drinking or eating in the smoking area after 10.00pm. No bottles or glasses shall be taken into that area after this time;
6. The double doors to the smoking area shall be kept closed at all times apart from access and egress. A member of staff shall be assigned to ensure that this condition is complied with; and
7. Customers will be required to leave the premises in a quiet and orderly manner and suitable notices will be displayed at all entrances and exits to that effect.

In reaching its decision, the Committee has had particular regard to the representations made by Mr Neef and the other residents and to the evidence which clearly suggests that there is a fundamental problem with noise emanating from the premises. The Committee has carefully considered whether to curtail the current licensing hours but believes that at this point in time such a step would be disproportionate bearing in mind the financial effect that such a step would have on the premises. However, if the imposition of these additional conditions does not rectify the noise nuisance problem then the Committee will be minded to seriously consider such a step on a further review.

There is a right of appeal from the Committee's decision to the Brighton Magistrates Court. Notice of appeal must be lodged with the Magistrates Court within 21 days from today.

The meeting ended at 12.23pm

J F Daly  
Chair