

# **LICENSING SUB-COMMITTEE**

## **MINUTES OF THE MEETING HELD ON**

**THURSDAY, 28 JULY 2011**

**Councillors Present:** Paul Bryant (Chairman), Andrew Rowles and Quentin Webb

**Also Present:** Alison Beynon (Solicitor) and Robert Alexander (Policy Officer)

### **PART I**

#### **1. Declarations of Interest**

No declarations of interest were received.

#### **2. Schedule of Licensing Applications**

#### **3. Application No. and Ward: 11/00796LQN The Black Horse St Johns Road Thattham RG19 3SY**

The Sub-Committee considered a report (Agenda Item 2(1)) concerning Licensing Application 11/00796/LQN in respect of The Black Horse, St John's Road, Thattham.

In accordance with the Council's Constitution, Sue Gore (Applicant of Review, Principle Environmental Health Officer, West Berkshire Council), Brian Leahy (Licensing Officer, West Berkshire Council); Patricia Tomlinson and George Bembenek (speaking in support of the review); Beverley Barnaby (landlady), Richard Morgan (DSP), Solicitor from Punch Taverns and Philip Ryder (speaking in objection to the review); Mike King and Dave Milsom (Thames Valley Police, responsible authority), addressed the Sub-Committee on this application.

Alison Beynon, the Council's Solicitor, referred to a conversation that had been had with the solicitor for Punch Taverns, regarding procedural issues. The Solicitor mentioned that she had not seen the representation made by the police, and felt that the email exchange in the letter was not sufficient proof that they wished to make a representation. Inspector David Milsom replied that there had been mediation with Mrs Beverley Barnaby and Mr Richard Morgan and the points raised in the agenda were what Inspector Milsom and Mike King wished to address. The Solicitor from Punch Taverns wished to ensure that no new information was going to be discussed, and reiterated that the responsible authority had not said that they wished to make representation, nor was there any date or signature on the representation that was on page 24 of the agenda. Inspector Milsom responded that he did not wish to make a new case, but would be able to support the review with information they held.

*The Sub-Committee retired at 10:15am to decide if the police had grounds to speak.*

*The Sub-Committee reconvened at 10:25am.*

Councillor Quentin Webb enquired where the attachment on page 24 and 25 came from, as there was no mention of it in the emails. Brian Leahy said that his understanding was that the letter was a result of the police licensing officers meeting with the DPS and Landlady. Councillor Webb further asked how Mr Leahy came in contact with the

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information. Mr Leahy responded that it was received from Sue Gore after her meeting with Punch Tavern. Mike King further mentioned that an email was sent to the Council on the 1<sup>st</sup> July with the attachment.

*The Sub-Committee retired at 10:32am to decide whether to give Thames Valley Police speaking rights.*

*The Sub-Committee reconvened at 10:43am.*

Councillor Paul Bryant informed the committee that Members had decided to give the Police permission to speak.

Mr Leahy introduced the report informing the committee that it was a review of the license of the Black Horse Inn, St John's Road, Thatcham. Mr Leahy said that an anomaly on page 2, where it mentioned supply of alcohol, it should also read, "Thursday, Friday and Saturday" and not just "Thursday & Saturday". Another change to be noted was in the letter from George Bembenek, on page 15 of the agenda, paragraph 2. It should read "my neighbour had her windows smashed".

Sue Gore (Principal Environmental Health Officer), as applicant for the review introduced her case to the Sub-Committee. The Black Horse was situated in a narrow road just off the main Bath Road in Thatcham, very close to domestic premises. The current DPS submitted an operating schedule in July 2010 on behalf of Punch Taverns plc detailing measures that they would take to prevent public nuisance (see attached). Mrs Gore said that it was disputed that the Black Horse had complied with paragraphs 1,3,4 and 7 of their operating schedule, and also mentioned that she disagreed with their declaration that the Black Horse was a 'traditional family pub'.

West Berkshire Council's Environmental Health Service received a complaint on the 8<sup>th</sup> December 2008, In respect of noise emanating from premises known as the Black Horse, of 2 St Johns Road, Thatcham. This complaint was from a resident in St John's Road, in respect of the continual late night noise from the pub and also to complain that there was a lot of debris left in the road including broken glass and vomit. The pub was visited the next day by an Environmental Health Officer (EHO), who spoke with the then Designated Premises Supervisor (DPS) Mr Beakes, who said that the pub was displaying notices asking clientele to leave quietly.

In May 2009, another resident complained to Environmental Health. This complainant stated that there was *"ongoing anti social behaviour: Excessive sound of music from within the pub most Friday nights. I have spoken to the landlord by phone and the volume has been turned down but this was usually approaching midnight and by then I am wide awake. The volume this weekend was particularly loud. There is also excessive noise from revellers leaving the pub late - sometimes as late 2.00am in the morning. There are also infrequent fights outside my window late at night. Saturday night just gone, I was woken by several women talking loudly and later by them singing very loudly. Also woken by taxis late at night tooting horns. This has gone on for 2 years and though I have written to the landlord and he has put up a sign on the pub door relating to noise and respect for householders its all to no avail. I should also like to point out that I have not confronted the revellers themselves as they are often drunk. I work a 9-hour day and every other Saturday and this is beginning to have an effect with the disturbed nights plus the fact that I now dread the weekends"*.

Mrs Gore informed the Sub-Committee that Mr Beakes (the previous DPS) was written to on the 13<sup>th</sup> May 2009 following this complaint, advising him of his responsibilities under the terms of the Licence and under the Environmental Protection Act 1990. Whilst it was accepted that this was under the previous DPS it was indicative of the complaints Mrs

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Gore had received prior to asking for the review. Most of those complaining to Environment Health had indicated they would not put in a representation to this review as they were unwilling to be named for fear of reprisals from the clientele of the Black Horse.

Two of the Council's Licensing Officers visited the premises in May 2009 at 23.00. A disco was being held and the (previous) DPS, Mr Beakes said that he was unaware that the music had to finish by 23.00. Both he and the DJ were advised that music had to stop by 23.00

In June 2009, yet another resident complained about the noise from the pub and in particular the taxis beeping their horns and revellers outside the pub shouting until the early hours. He claimed this was a regular occurrence on Thursdays and through the weekend especially. He had spoken to the landlord but to no avail.

In September 2009 police were called to a fight outside. A neighbour had called them as the landlord showed no signs of doing so. The complaint was received during the next working day, when the complainant informed West Berkshire Council of the fight, her concerns that the men that were involved were very drunk. A visit from the Council's licensing officer followed as there were indications that those involved in the fight had been served alcohol whilst already drunk. This was brought to the attention of the landlord, Mr Beakes.

Another visit was made by Licensing Officers of the Council in July 2010. They spoke to a woman behind the bar who did not know who the DPS was. She called another woman who would be half an hour. The DPS had changed to Richard Morgan, but the pub was still under the ownership of Punch Taverns. Both Punch Taverns and Richard Morgan were written to regarding the complaints.

Mr Beakes moved out in August 2010 but Environmental Health continued to receive complaints regarding noise, people and vehicles in the vicinity until the early hours.

Mrs Gore explained that the Council had continued to receive calls regarding the noise and people leaving late at night as before. The complainant was reluctant to call the Council's out of hours service as they could be identified. In March 2011, yet another resident complained about the noise from the pub and in particular the use of the garden area. They felt unable to use their own garden due to the constant swearing and shouting. They also found broken bottles in their garden and the fencing had been broken down where people had tried to retrieve balls.

Another Licensing visit was made in April 2011 and Mrs Barnaby was spoken to. Later that month Mrs Gore said that a call had been received on the out of hours service from a local resident. He was complaining about the noise from a live band. An EHO attended and witnessed noise from music at the premises at 23.37, after the 23.00 licence condition cut off. There was also a lot of vehicle movement and shouting from the pub

In May 2011, another call to the Council's out of hours service resulted in Ms Gore attending the premises of a local resident. Ms Gore stated that she had witnessed loud music from the pub, clearly heard in the complainant's premises. The pub door was open and people were in the street. A car was parked in the middle of the road and a woman was shouting at the driver. Inside the complainant's premises music was clearly heard and shouting from people in the street and car doors slamming. In view of the levels of noise and the apparent frequency of disturbance Ms Gore considered a statutory nuisance to exist under EPA. Notice was duly served on the premise on the 9 May 2011 on Punch Taverns, copied to the DPS Richard Morgan and the landlady, Bev Barnaby.

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Following representations on behalf of Punch Taverns Plc regarding their liabilities under the Environmental Protection Act 1990, the Notice was subsequently withdrawn. Punch Taverns Plc stated that, "*The fact that Punch Taverns PLC are the premises licence holder does not in any way make them responsible for the alleged nuisance.*" Mrs Gore said that she felt this was a disappointing response.

Having reviewed its options, Environmental Health determined that the most appropriate manner in which to address the ongoing problem of noise nuisance arising at the premises, would be to call for a review of the licence by the Licensing Authority.

Bev Barnaby was spoken to and advised as to the circumstances leading up to servicing of the Notice. She had recalled speaking to Anna Smy, Principal Environmental Health Officer (Pollution) last year and the requirement to put up some signs in the pub, reminding people to leave quietly. She had been away in April when the first noise nuisance was witnessed and she had left the pub at 22.00 on the night Ms Gore had visited. She agreed to speak to the staff and try and keep the doors and windows closed but that would be difficult in hot weather.

On 29<sup>th</sup> June 2011, Mrs Gore met with Mark Bicknell, Punch Taverns Business Manager and Bev Barnaby, current landlady. This led to some areas of agreement which Mrs Gore felt would go some way to addressing the current noise issues.

One of the areas of discussion involved the fact that the current DPS, Richard Morgan was a remote DPS as he had been living in London since taking over in June 2010. Whilst this was not outside the legislation, it did make day to day control more difficult at the premises.

It was the opinion of the Environmental Health Authority that the level of public nuisance arising from the premises was having a disproportionate and unreasonable impact on the amenity and environment of those residents living in the vicinity of the premise.

The Environmental Health team had considered its powers for dealing with noise nuisance available under alternative legislation. However, it was apparent that the problems of noise nuisance arising at the Black Horse and the impact on those living in the vicinity would on this occasion be most appropriately dealt with by the Licensing Authority.

It might be considered by the Licensing Authority that additional conditions should be attached to the Premises Licence, in an attempt to deal with the problem of ongoing noise nuisance at the Black Horse. If the Licensing Authority determined that additional and supplementary measures were necessary to promote the licensing objective for the prevention of public nuisance, Environmental Health would suggest that the following conditions would be of assistance in preventing public nuisance:

1. The premises to close to the public at 23:30 hours including Fridays and Saturdays
2. No regulated entertainment of any description shall be permitted on the premises after 23:00 hours.
3. No Entertainment Facilities will be provided at the premises after 23:00 hours
4. Smoking is to be prohibited at the front of the property and is to be limited to the garden at the rear of the premises
5. Checks for noise levels shall be undertaken at the rear of the premises in the garden area. Noise levels must be managed and controlled to ensure that there

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is no excessive noise transfer from that area. A record shall be kept of checks undertaken and this will be made available to an officer of the Licensing Authority on demand.

6. Refusal log (for under sale and other refusals) to be used and made available to Officers upon request
7. SIA approved door staff shall be employed at the premises from 20:00 hours until the last member of the public has left the premises on any night when regulated entertainment is being provided at the premises.

Mrs Gore said that it was also clear that the current DPS was not on site to manage or control the premises effectively. It was Mrs Gore's understanding that changes might be effected regarding the DPS and requested that any new DPS make contact with the local Police and PCSO within a period of 1 month from being nominated as the DPS.

Mrs Gore closed by saying, that this morning she had noticed the freehold had been put up for sale.

Councillor Webb elaborated on Mrs Gore's conditions, and questioned whether it was necessary for the pub to close at 23:30 every night, including Fridays and Saturdays. Mrs Gore said that the pub was a "Traditional Family Pub" and stated if this was true it did not require to be open any later. Councillor Webb asked what time would Mrs Gore suggested that alcohol be stopped from being served. Mrs Gore responded 23:00.

Councillor Paul Bryant said that he thought the responsibility primarily lay with Punch Taverns, and he was quite shocked to see that they did not admit responsibility. Councillor Bryant further asked why the nuisance notice was withdrawn. Mrs Gore said that Environmental Health believed Punch Tavern to be responsible, however they said they were not. Mrs Gore did not believe the notice would have been upheld, and felt best to withdraw it.

The Solicitor from Punch Taverns asked Mrs Gore if she had seen an improvement in recent months. Mrs Gore said Environmental Health had not received as many complaints in recent months, and therefore an improvement had been noticed.

Mrs Tomlinson, speaking as a supporter to the review raised the following points:

- Although the pub had changed when new management took over, it was now back to what it used to be like;
- Mrs Tomlinson said on weekends she had to wear ear plugs to sleep;
- Mrs Tomlinson acknowledged that it was a business, however she asked that more consideration was given from the patrons while leaving;
- The licensing sub-committee were also made aware of an incident which involved Mrs Tomlinson's windows being smashed;
- Mrs Tomlinson recalled an incident which involved a fight right outside her property, which she stated was not a nice sight to witness.

The solicitor from punch taverns asked whether the incident referred to could be linked directly to the pub, Mrs Tomlinson said yes, she saw the gentlemen involved leaving the pub. Mrs Barnaby informed the sub-committee that they were leaving the pub, as she had asked them to leave as they had previously being barred. The Solicitor further asked if Mrs Tomlinson was in favour of the conditions proposed, as well as having a direct

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phone number to Mrs Barnaby and the DPS. Mrs Tomlinson said these would be appreciated.

Councillor Andrew Rowles asked whether the issues were only on a weekend, or if they applied to other days. Mrs Tomlinson said that the incidents mainly occurred on weekends, however there had been occurrences on Thursdays and Sundays as well.

Mr Benbeneck, speaking as supporter to the review raised the following points:

- The first six months of the new DPS were better; however it had deteriorated recently;
- The noise usually lasted until 3am, and on average it was six nights out of seven;
- Mr Benbeneck informed the sub-committee that he had been given prescription tablets from the doctor to deal with the anxiety and sleepless nights caused by the pub.

The Solicitor from Punch Taverns asked whether Mr Benbeneck was implying that the pub was serving outside of its licensing hours. Mr Benbeneck responded that they were, as they turned the lights off at the front and went into the back to continue drinking.

Councillor Bryant asked what Mr Benbeneck would like from the pub. Mr Benbeneck said that he was willing to accept the conditions suggested by Mrs Gore, Punch Taverns and Thames Valley Police.

The Solicitor, from Punch Taverns, speaking in objection to the review raised the following points:

- The for sale sign was outside the premises because, Punch Taverns were selling the premises, however any changes made to the license would stay with the premises;
- The Solicitors supplied some additional conditions which had been considered by the DPS and landlady following a meeting with Thames Valley Police.
- Beverley Barnaby was being prepared to become DPS, taking over from Mr Morgan;
- The issue regarding music being played late was on either Good Friday or the night of the Royal Wedding;
- The CCTV would take some time to get installed, and the Solicitor proposed that 30 days would be a suitable time;
- Windows and doors would also be kept closed during all entertainment;
- The Solicitor said that she was broadly content with the conditions proposed, however queried whether 23:30 as a closing time was necessary with all other conditions in place;
- The requirement of door staff was also mentioned as a slight over reaction, and a risk assessment would be recommended.

Councillor Rowles asked if door staff would be better for all weekends or occasionally when there was entertainment on. Mr Morgan said that it was only a small terraced pub and suggested that it would not be appropriate to have SIA approved door staff, but

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instead a designated member of staff be allocated to monitor access and egress from the premises..

Mrs Tomlinson asked if any steps were being encouraged to stop smoking outside the premises. The Solicitor responded that there it was hoped that a condition would be attached to the licence which would say no smoking would be permitted on the street. Councillor Bryant said this was not enforceable. The Solicitor responded that it was proposed that the wording would read along the lines of; *“Patrons shall not be permitted by staff to smoke at the front of the property. Clear and legible signage will be displayed requesting smoking to take place in the rear garden”*.

Mr Mike King and Inspector Dave Milsom, from the responsible authority (Thames Valley Police), raised the following points to the sub-committee:

- Mr King addressed the Sub-Committee informing them that they first became involved in the premises following an assault involving someone under the age of 18 who was intoxicated.
- A subsequent visit to the pub found that some of the issues had been resolved, and no further calls had been received by Mr King.
- Inspector Milsom said he was happy to see the Black Horse taking the conditions seriously, and asked that the condition relating to SIA door staff be reviewed. Inspector Milsom said his main concern arose from the premises dispersal policy.
- Inspector Milsom also mentioned that if the pub was a family pub, it did not require being open until midnight.

Councillor Webb asked what was meant by a dispersal policy. Inspector Milsom said this was widely used in town centres, and asked the question, about what was going to happen when the pub closed. Inspector Milsom said it was the police working with landlords and door staff to stop problems after the premises closed. Councillor Webb asked if it was a West Berkshire Council policy. Inspector Milsom said it was not, however noted that although SIA door staff were expensive a primary job was for them to disperse crowds and to help patrons get home (by putting them in taxis).

Councillor Webb asked if Licensing were supportive of this. Mr Leahy said they were, and worked with the licensee and the police to implement this policy.

Councillor Bryant asked about the incident involving drinks being served until 3am. Inspector Milsom said that there was a credit card transaction logged between 0200-0245. Mr King said that in this instance no attempt to prosecute was brought about, as it was thought it would be better to try and help the landlady and DPS. Councillor Bryant asked whether this was a one off occurrence. Mr King said it was. Mrs Barnaby responded to the accusation and stated that the credit card transaction through the till was by a police officer who wanted cash back. The police were in the premises interviewing following an incident.

Mr Ryder, Objector to the review raised the following points:

- The pub was family orientated;
- There had been a big improvement in clientele's behaviour following Mrs Barnaby's appointment as landlady, as the premise was now much more family orientated.

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- Mr Ryder said atmosphere at the time he attended the pub was calm and a professional atmosphere.

Councillor Webb asked if Mr Ryder lived near the pub. Mr Ryder said he did not, he lived in Bucklebury. Councillor Rowles asked what times Mr Ryder was usually in the pub. Mr Ryder responded later afternoon to early evening.

Mrs Gore felt that the conditions raised were particularly helpful, especially regarding reduced hours, which would assist in the reduction of public nuisance.

**RESOLVED that: the premises licence number 013215 in respect of premises at The Black Horse, St John's Road, Thatcham be amended with immediate effect in the terms below:**

- (1) The opening hours of the premises shall be permitted from 11:00 to 23:30 on Mondays to Sundays. A further additional hour following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend. A further additional hour following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend. A further additional hour every Christmas Eve. A further additional hour every boxing day. To reflect existing New Year's Eve/Day hours.

REASON: The prevention of public nuisance.

- (2) The Supply of alcohol shall be permitted from 11:00 to 23:00 on Mondays to Sundays. A further additional hour following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend. A further additional hour following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend. A further additional hour every Christmas Eve. A further additional hour every boxing day. To reflect existing New Year's Eve/Day hours.

REASON: The prevention of public nuisance.

- (3) No Regulated entertainment of any description shall be permitted on the premises after 23:00hrs

REASON: The prevention of public nuisance.

- (4) No entertainment facilities will be provided at the premises after 23:00 hours.

REASON: The prevention of public nuisance.

- (5) Patrons shall not be permitted by staff to smoke at the front of the property. Clear and legible signage will be displayed requesting smoking to take place in the rear garden.

REASON: The prevention of public nuisance.

- (6) Checks for noise levels shall be undertaken at the rear of the premises in the garden area, during live or amplified music performances. Noise levels must be managed and controlled to ensure that there is no excessive noise transfer from that area. A record shall be kept of checks undertaken and this will be made available to an officer of the Licensing Authority on demand.



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REASON: The prevention of public nuisance.

- (7) Sight of evidence of age shall be required from any person appearing to those engaged in selling or supplying alcohol to be under the age of 25 and who is attempting to buy alcohol. Refusal log (for under age sale and other refusals) to be used and made available to Officers upon request. Identification policy approved by Trading Standards shall be implemented.

REASON: The prevention of public nuisance.

- (8) The Premise Licence holder shall have installed a digitally recorded CCTV system. Camera coverage shall include the major entry and exit points and be able to record frontal identification of every person entering in any light condition. Additional cameras shall be installed to cover the garden area at the back of the venue.

All Cameras shall continually record whilst the premises were open to the public and the recordings shall be kept available for a minimum of 31 days with time and date stamping. Data recordings shall be made immediately available to an authorised officer of West Berkshire Council or police officer together with facilities for viewing upon request.

Recorded images all are of such a quality as to be able to identify the recorded person. At all times when the venue is open there will be a member of staff on duty who can operate the system and retrieve footage when required.

If the CCTV system becomes inoperative for any reason, the licensee shall notify the Police and Local Authority of this within 3 days.

A notice shall be displayed at the entrances to the premises advising that CCTV is in operation.

REASON: The prevention of public nuisance. As agreed between the Premise Licence Holder and the Police.

- (9) An incident book and record of details of all instances of public disorder and other alcohol related incidents shall be maintained. This incident book shall be made available to officers of West Berkshire Council, and authorised officer of Thames Valley Police and any Police Officer

REASON: The prevention of public nuisance. As agreed between the Premise Licence Holder and the Police.

- (10) All reasonable steps shall be taken to ensure that people entering or leaving the premises do so in an orderly manner and do not in any way cause annoyance to residents and people passing by the premises.

REASON: The prevention of public nuisance. As agreed between the Premise Licence Holder and the Police.

- (11) Windows will be kept closed at all times during live or recorded music performances. Door too will be kept closed except for access or egress.

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REASON: The prevention of public nuisance..

- (12) Prominent, clear and legible notices will be displayed at all exits requesting patrons to respect the needs of local residents and to leave the premises and the immediate area quietly.

REASON: The prevention of public nuisance.

- (13) A dedicated Taxi service shall be available for customers with strict instructions of no horn blowing and/or door banging.

REASON: The prevention of public nuisance.

- (14) Bottling-up and refuse disposal outside is prohibited between 1800hrs and 0800 hours so as to minimise disturbance to near by properties.

REASON: The prevention of public nuisance.

- (15) A direct telephone line to the duty manager shall be available immediately upon request to residents who are encouraged to use it if they think necessary.

REASON: The prevention of public nuisance.

- (16) There is a "Zero tolerance" drug policy in place and all staff will receive continuous training in "drug awareness" and all aspects of Public Safety and Prevention of Public Nuisance. Any patrons who do not comply will be barred.

REASON: The prevention of public nuisance.

*(The meeting commenced at 10.00 am and closed at 12.05 pm)*

**CHAIRMAN** .....

**Date of Signature** .....