

**SHEFFIELD CITY COUNCIL**

**Licensing Sub-Committee**

**Meeting held 16 August 2016**

**PRESENT:** Councillors David Barker (Chair), Neale Gibson and Bob Pullin

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**1. APOLOGIES FOR ABSENCE**

1.1 An apology for absence was received from Councillor George Lindars-Hammond.

**2. EXCLUSION OF PUBLIC AND PRESS**

2.1 RESOLVED: That the public and press be excluded from the meeting before discussion takes place on item 4 on the grounds that, if the public and press were present during the transaction of such business, there would be a disclosure to them of exempt information as described in paragraphs 1 and 2 of Schedule 12A to the Local Government Act 1972, as amended.

**3. DECLARATIONS OF INTEREST**

3.1 There were no declarations of interest.

**4. HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING - INDIVIDUAL CASE**

4.1 The Chief Licensing Officer submitted details in respect of a case relating to hackney carriage and private hire licensing.

4.2 The licensee attended the hearing with a representative and they both addressed the Sub-Committee.

4.3 RESOLVED: That the case now submitted be determined as follows:-

<u>Case No.</u>	<u>Licence Type</u>	<u>Decision</u>
75/16	Review of a Hackney Carriage and Private Hire Driver's Licence	In the light of the incident now reported, and the responses given to the questions raised, the licensee be given a written warning, to remain on the licence for a period of two years, and indicating that if there is any further cause for concern, the licence will be referred back to the Sub-Committee.

**5. LICENSING ACT 2003 - YANKEE LOUNGE/LONDON ROAD CLUB, 1ST FLOOR, 178-184 LONDON ROAD, SHEFFIELD, S2 4LT**

- 5.1 The Chief Licensing Officer submitted a report to consider an application made by the Council's Health Protection Service, under Section 51 of the Licensing Act 2003, for a review of the Premises Licence in respect of the premises known as Yankee Lounge/London Road Club, 1st Floor, 178-184 London Road, Sheffield, S2 4LT.
- 5.2 Present at the meeting were Huseyin Esendemir (Premises Licence Holder), Naze Esendemir (Premises Licence Holder's Daughter), Michelle Hazlewood (John Gaunt, Solicitors, for the Premises Licence Holder), Sean Gibbons (Health Protection Service, Applicant), Julie Hague (Sheffield Safeguarding Children Board), Shiva Prasad and Bob Singh (Environmental Protection Service), Cheryl Topham and Sam Cooper (South Yorkshire Police), Georgina Hollis (Licensing Service), Emma Rhodes (Licensing Enforcement and Technical Officer), Brendan Twomey (Solicitor to the Sub-Committee) and John Turner (Democratic Services).
- 5.3 Brendan Twomey outlined the procedure which would be followed during the hearing.
- 5.4 Emma Rhodes presented the report to the Sub-Committee, and it was noted that representations had been received from the Sheffield Safeguarding Children Board, Environmental Protection Service, South Yorkshire Police and Licensing Service, and were attached at Appendix 'B' to the report.
- 5.5 Brendan Twomey checked as to whether all relevant parties had received all the additional information circulated electronically prior to the hearing, and it was confirmed that this was the case.
- 5.6 Sean Gibbons, on behalf of the Health Protection Service, referred to the letter dated 9<sup>th</sup> February 2015, sent to Huseyin Esendemir (Premises License Holder, (PLH)), following a site meeting on 5<sup>th</sup> February 2015, which had been arranged in order to discuss issues associated with the use of the premises. Reference was made to the application made in 2012, for a Premises Licence to cover the Turkuaz Bar and Grill and the London Road Club, and Mr Esendemir had been made aware of the fact that, at this time, he had not sought appropriate approvals from the Council's Planning Service and Building Control, and that in order for him to pursue the licence for the London Road Club, he needed to seek such approvals. Mr Gibbons expressed his concerns and disappointment when he noticed that, at a site visit on 6<sup>th</sup> May, 2016, a number of structural alterations had been made to the London Road Club and that these premises were now being operated as a late bar/nightclub. He referred to the potential for health and safety risks to the public, following the

alterations, specifically regarding the load-bearing strength of the floor, and also made reference to a general lack of facilities for the number of people attending the premises as a nightclub, which could lead to problems in terms of personal safety and crime and disorder. Mr Gibbons stated that he was further disappointed at the fact that, despite assurances being given that similar events at the premises would not go ahead, events had been held at the premises on 29<sup>th</sup> May and 10<sup>th</sup> June 2016. He stated that, in the light of the concerns raised, and the lack of co-operation and disregard for public safety, the Service had been forced to take immediate action, in terms of the serving of a Prohibition Notice and submitting an application for the review of the Premises Licence.

- 5.7 Shiva Prasad added that, he too had felt let down by Mr Esendemir's actions, and that the decision to serve the Prohibition Notice and apply for the review of the Premises Licence had not been taken lightly.
- 5.8 Prior to raising questions, Michelle Hazlewood confirmed that the premises had been closed, following the holding of the last event on 10<sup>th</sup> June 2016, all the relevant works requested had now been undertaken, and it was the plan for the former London Road Club premises to operate as Turkuaz Bar and Grill. In response to questions from Michelle Hazlewood, it was stated that the venue's first Premises Licence included music and dancing and that in 2008, whilst there was no specific reference on the Licence that the premises were to be operated as a restaurant, the premises were clearly set out for that purpose, nor was there a condition on the Licence stipulating the requirement for 80 covers. Whilst it was accepted that there was no evidence in terms of potential structural issues documented in the review papers, this issue had been discussed with the client following a site meeting held on 6<sup>th</sup> May 2016. Mr Gibbons stated that he believed that Mr Esendemir was clear, following meetings held with him, what was required of him. The concerns with regard to the structural condition of the floor had not been raised in 2008, as the premises was not operating as a nightclub at that time, and the suggested limit on the number of customers had been based on the toilet facilities within the premises. Further to the meeting held on 6<sup>th</sup> May 2016, to discuss issues regarding the change of use of the premises, the Health Protection Service had raised concerns with regard to the structural condition of the premises not being suitable for more than 80 customers on the basis that, following visits to the premises, officers had noticed that it was being operated as a nightclub.
- 5.9 Julie Hague, Sheffield Safeguarding Children Board (SSCB), stated that Mr Esendemir had shown disregard to the regulations and core objectives of the Licensing Act, particularly in the light of the fact that there had been a material operational transformation at the premises. She stated that the premises were located in an area linked to crime

and disorder, and considered that the premises had been operating in the absence of appropriate licensing conditions for this type of venue. Venues of this nature would be required to adopt relevant safeguarding measures, such as age checks on customers, and that she was disappointed that Mr Esendemir did not seek advice from the SSCB, which was always willing to assist in such matters, and offered free training and advice. Ms Hague stated that, although she was aware of the change of the Designated Premises Supervisor (DPS), and that the premises was now operating as it had done originally, as a restaurant, she expressed concerns over the apparent lack of management control and lack of co-operation with the responsible authorities, and was concerned at the possibility of the premises converting back to a nightclub. She stated that there was a need for a written Risk Assessment and the implementation of suitable safeguarding measures in terms of the future operation of the premises.

- 5.10 In response to questions directed to Julie Hague, it was stated that in terms of the problems at an event held at the premises on 27<sup>th</sup> March, 2016, whilst it was believed that there were around 150 people present at the time, this figure was academic in the sense that the SSCB did not consider it to be a suitable environment for children and young people. The SSCB would like to see the implementation of an extra level of risk assessment in terms of events held at the premises involving children and young people, and it would also like to see Mr Esendemir, or another responsible member of staff, attend the multi-agency safeguarding training. Whilst there were effectively two different elements to the premises, which were pointed out on the site plan, they were both licensed under the same Premises Licence, which had caused some level of confusion. The London Road Club comprised a very light usage operation, which was predominantly frequented by members of the Turkish community in the evenings, and there was no crime and disorder linked to this part of the premises. Ms Hague confirmed that the SSCB did not have any safeguarding concerns prior to the change of use of the premises, and was happy for the premises to continue operating on the condition that the DPS complied with all the licence conditions, and was aware of his responsibility to comply with regulations and liaise, where necessary, with the responsible authorities, both to protect staff and the public. Whilst it was recommended that a member of staff attended the multi-agency safeguarding training, there was no legal requirement for staff to do so, although the Sub-Committee could include this requirement as an additional condition on the licence. Ms Hague confirmed that one risk assessment could be undertaken in terms of a number of different events, and updated periodically.
- 5.11 Bob Singh (Environmental Protection Service) stated that the Service's representations regarding the review of the Premises Licence were based on the licensing objective for the prevention of public nuisance. He stated that the premises were located in a mixed

commercial and residential area, with relatively low background noise levels throughout the late evening, and that the Service had received a number of complaints from local residents, since September 2014, about loud music during regulated entertainment events, customers outside the premises and breaches of permitted planning and licensing operating hours. Mr Singh referred specifically to the complaints, of which there were six, providing information in terms of the times and nature of the complaints. He stressed that, due to resource issues, the Service had not been able to undertake any investigations into the complaints received. Mr Singh stated that the Service was aware that the premises were operating as two separate venues, a private members club and a restaurant, and that the Service had been notified by the Local Planning Authority on 18<sup>th</sup> April 2016, that significant structural alterations to the restaurants had taken place to form a late bar/nightclub. Representatives of the Service had attended the site meeting held on 6<sup>th</sup> May 2016, and following an inspection of the premises, the alterations had been noted, and which had included the installation of a DJ booth, a large PA system, a dance floor, a raised dancing platform and a vertical bar area. The Service was particularly concerned that residents and commercial uses in close proximity, and adjoining buildings, would potentially be affected by excessive noise nuisance by both noise breakout from regulated entertainment and customers using the external areas until the early hours of the morning. The Service had offered the former DPS, Mr Blanchard, advice on noise control, and recommended that he should seek professional advice on a scheme of sound attenuation measures to improve the fabric of the building. Mr Singh stated that, despite assurances from Mr Blanchard that all proposed future events at the premises would be cancelled, the Service continued to receive complaints of noise breakout, which had indicated that further events had been held, and that the management had failed to comply with the conditions of the Premises Licence, and satisfy the requirements of the Service. In the light of this information, Mr Singh stated that the Service would like to see the withdrawal of regulated entertainment from the Premises Licence, and that the operating hours be restricted to be consistent with such conditions granted under Planning Consent.

- 5.12 Further to questions directed to Mr Singh, it was confirmed that there was an external smoking terrace, the use of which was allowed up to 23:00 hours, although the Service had received complaints regarding noise nuisance emanating from this area after this time. Some of the complaints of noise nuisance had been received from residents living within the close proximity of the premises, and it had been assumed that such noise nuisance had emanated from the external smoking area. It was confirmed that there were no noise attenuation measures in connection with the external smoking area, or any other part of the premises, which complied with the standards of the Environmental Protection Service. The level of complaints received in connection with the operation of the premises, in comparison with other licensed

premises in the City, were moderate to low. Mr Esendemir had taken on board some recommendations suggested by the Service, which had resulted in a reduction in the level of complaints received. The six complaints received had been made by three separate individuals. In terms of the Service's recommendations, Mr Singh confirmed that, if the Sub-Committee was minded to allow regulated entertainment at the premises, he would recommend that the three conditions set out in his e-mail, dated 19<sup>th</sup> July 2016, relating generally to sound attenuation measures and requirements, be placed on the Premises Licence. Four of the six complaints of noise nuisance had all been received in 2015, with two relating to the use of the external smoking area, and there had been no investigations into the 6<sup>th</sup> complaint, received on 26<sup>th</sup> June 2016. Mr Singh confirmed that no complaints of any nature had been received following the two late night events held at the premises on 29<sup>th</sup> May and 6<sup>th</sup> June 2016, nor had any complaints been received during the premises' normal operating hours.

- 5.13 Cheryl Topham (South Yorkshire Police) stated that the police had not had any issues in connection with the operation of the premises until the change of use, and particularly regarding the incident on 27<sup>th</sup> March 2016. Although the police believed the premises were still operating as a restaurant, on attending the premises on 27<sup>th</sup> March 2016, following reports of a large-scale fight, it was apparent that the nature of the operation had changed, as there was a DJ playing music, and a large crowd present. Following this incident, officers visited the premises in an attempt to make contact with staff, but found the premises closed. The police later found out about the plans to change the operation to a late bar/nightclub. Officers attended the site meeting on 6<sup>th</sup> May 2016, and expressed concerns regarding the potential for crime and disorder following the change of use. Assurances were given at the meeting that any necessary alterations would be made before similar events were to take place on the premises. However, events were held at the premises at the end of May 2016, and a further event had been arranged on 10<sup>th</sup> June 2016, without any of the responsible authorities having been informed. On 22<sup>nd</sup> June 2016, Ms Topham attended the premises with Acting Police Sergeant Sam Cooper, in an attempt to gain CCTV footage of the event held on 28<sup>th</sup> May 2016. The premises were locked up at the time, but Mr Blanchard arrived shortly after, informing the officers that the CCTV system was in the loft, which was accessible via a metal stepladder. The officers declined the offer to enter the loft, advising Mr Blanchard that this was not appropriate, and should be moved straight away.
- 5.14 Acting Police Sergeant Sam Cooper (South West Local Policing Team) read through her witness statement, focusing on the fact that the premises were situated within a heavily populated, very diverse community, and which, based on local policing intelligence and knowledge, was known to be currently associated with gang related

violence, drug dealing, anti-social behaviour and recent high levels of crime and disorder. She referred to the incident at the premises on 27<sup>th</sup> March 2016, the multi-agency site meeting held on 6<sup>th</sup> May 2016, and the visit to the premises, accompanied by Cheryl Topham, in an attempt to view the CCTV system. Acting Sergeant Cooper stated that she was becoming increasingly concerned that Mr Esendemir was not properly managing events at the premises, and expressed concerns at the potential health and safety risks for her colleagues attending the venue in the light of a lack of suitable provision for health and safety measures.

- 5.15 In response to questions directed at Cheryl Topham and Acting Sergeant Sam Cooper, it was stated that, prior to officers attending the premises following the disturbance on 27<sup>th</sup> March 2016, the police believed the premises were still operating as a restaurant, and that during the visit, there appeared to be a lack of clarity in terms of who was in charge. There was further confusion as the police held no contact phone numbers for any of the management. The police believed that, with appropriate licensing controls in place, there would be a possibility for the premises to operate as a late bar/nightclub in this area. The police would like to see the suggested conditions, which had been agreed with Mark Blanchard, added to the Premises Licence, and it was confirmed that the police had never received the CCTV footage in terms of the incident at the premises on 27<sup>th</sup> March 2016, despite requests to see this. The officers confirmed that they had not been aware of any problems associated with the events held at the premises on 29<sup>th</sup> May and 10<sup>th</sup> June 2016. The police would welcome a revised condition on the Premises Licence relating to the premises' CCTV system, and a condition requiring a minimum number of covers in the area of the premises fronting on to London Road, so as to give assurances that such premises could not be reverted back to a late bar/nightclub.
- 5.16 Georgina Hollis (Licensing Service) stated that the Service's objections related to the core objectives with regard to the prevention of crime and disorder and public safety. The Service supported the review in the light of the evidence that the premises had been operating as a late bar/nightclub, hosting events which had significantly changed the building use from a restaurant and community venue, and the terms on which the Premises Licence was previously granted. The Service had been notified by the Environmental Protection Service of significant alterations to the internal front area of the premises, which had changed the venue's operation style and layout significantly, and without the submission and authorisation of a variation to the Premises Licence. The Service then wrote to Mr Esendemir, explaining that it had been notified of the changes, raising questions with regard to Mr Blanchard's position at the premises, and raising issues regarding the possible requirement for separate Premises Licences in respect of the two elements of the premises. Ms Hollis stated that she and a colleague attended the

premises on 10<sup>th</sup> July 2016, when they were open to the public, and when they introduced themselves, they were greeted by Mr Blanchard. On questioning him regarding the unauthorised works, he stated that he had invested a considerable amount of money in the premises, and had employed a structural engineer to carry out a test/inspection of the floor for safety purposes, as well as employing a noise surveyor. Mr Blanchard however, was not able to present the officers with any confirmation that these works had been undertaken, and appeared to divert away from their questioning with regard to his involvement in the business. On walking around the premises, Ms Hollis noted that substantial internal alterations had been made, and that the decoration inside the premises had been changed to an American bar style theme, with the name 'Yankee Lounge' painted in blue, red and white stripes. Ms Hollis confirmed that she had attended a number of meetings with Mr Esendemir and his solicitor, highlighting the need for him to inform the Licensing Service, and other relevant responsible authorities, in terms of any changes made to the premises and that, unfortunately, no prior warning of any of the changes made had been received by any of the responsible authorities.

- 5.17 In response to a question raised by Councillor Neale Gibson, Ms Hollis stated that, although Mr Esendemir spent a lot of time out of the country, he was aware of his responsibilities, in his role as PLH, particularly having submitted an application for a variation to the Licence in the past. The Licensing Service had serious concerns with regard to Mr Esendemir's apparent lack of control and compliance in connection with the licensing requirements.
- 5.18 Michelle Hazlewood put forward the case on behalf of the Premises Licence Holder, indicating that Mr Esendemir had held this position since 2008, with the premises formerly operating as a community venue. She stated that, whilst accepting there had been some issues in terms of administration, it was not envisaged there would be any further problems now that the operation had returned to a restaurant. Ms Hazlewood indicated that, apart from the incident on 27<sup>th</sup> March 2016, there had not been any issues in terms of crime and disorder, and pointed out that there had been no representations made from residents living within close proximity of the premises, despite there being a number of terraced properties to the rear. In terms of the complaints of noise nuisance, it was stated that there were a number of restaurants and takeaways in the area, as well as a garage and a fruit and veg wholesaler, to the rear of the premises, to which deliveries were frequently made in the early hours of the morning. There was also a supermarket below the restaurant area, which was open 24 hours a day, and which also received deliveries at varying times of the day and night. The music was turned off at 24:00 hours, and only two people were allowed in the external smoking area at any one time. Ms Hazlewood stated that she accepted, on behalf of Mr Esendemir, that there had been issues in terms of poor administration



and a lack of communication in connection with the operation of the premises. This could have been as a result of Mr Esendemir visiting his family, who had a home in Turkey, very close to the Syrian border, which had obviously been a concern for him, as well as Mr Esendemir focusing on his other restaurant in Gleadless. This had resulted in him sub-letting the premises on London Road to Mr Blanchard. The problems at the premises during the event held on 27<sup>th</sup> March 2016, together with Mr Blanchard's wishes to take the premises forward as a late bar/nightclub, had triggered the site meeting on 6<sup>th</sup> May 2016, at which concerns had been raised by all the responsible authorities in terms of the premises moving in this direction. Although a planned event shortly after this date had been cancelled, following the concerns of the responsible authorities, two further events were held, on 29<sup>th</sup> May and 10<sup>th</sup> June 2016. A structural survey had been undertaken, and Mr Blanchard had received verbal confirmation that the floor of the premises would be structurally strong enough to support 150 people. Ms Hazlewood stressed that there were no problems or complaints of noise nuisance made following the two events. Following the event on 10<sup>th</sup> June 2016, the premises were closed, and Mr Blanchard was removed as the DPS. Mr Esendemir then decided he wanted to turn the premises back to a restaurant, and invested a considerable amount of money in terms of the necessary alterations. Discussions had been held between the representatives of the responsible authorities present at this meeting, and Ms Hazlewood, resulting in an agreed set of proposed conditions being developed. In conclusion, Mr Esendemir apologised to the Sub-Committee, and to the representatives of the responsible authorities, for the poor administrative practices and lack of communication which, he believed, had come about on the basis that he had taken on too much work.

- 5.19 In response to questions directed to Michelle Hazlewood and Mr Esendemir, it was stated that Mr Blanchard was a business partner, with both he and Mr Esendemir investing a considerable amount of money in the business, and both losing a lot of money. The CCTV footage from the incident at the premises on 27<sup>th</sup> March 2016, would no longer be available as images were only retained for 28 days. Mr Esendemir was not aware that the police wanted to view the footage. The equipment had been kept in the loft as they had experienced theft of such equipment in the past and considered this would be a safe place to locate it. The structural survey had been commissioned by Mr Blanchard, and Mr Esendemir was not aware of his plans. Mr Esendemir planned to appoint a manager, on a long-term basis, as he envisaged that he would still be returning to Turkey on a regular basis. The current operation of Viva Tequila, Mr Esendemir's other restaurant in Gleadless, comprised dining and entertainment, including amplified music, which he planned to replicate at the premises on London Road. When customers were no longer able to use the external smoking area, when it closed at 23:00 hours, they would be expected to smoke at the front entrance, with only two to

three people being able to do so at any one time. It was confirmed that customers were not allowed to take their drinks out to the external smoking area.

5.20 Michelle Hazlewood summarised the case on behalf of Mr Esendemir.

5.21 Emma Rhodes outlined the options open to the Sub-Committee.

5.22 RESOLVED: That the public and press and attendees involved in the application be excluded from the meeting before further discussion takes place on the grounds that, in view of the nature of the business to be transacted, if those persons were present, there would be a disclosure to them of exempt information as described in paragraph 5 of Schedule 12A to the Local Government Act 1972, as amended.

5.23 Brendan Twomey reported orally, giving legal advice on various aspects of the application.

5.24 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees.

5.25 RESOLVED: That, in the light of the information contained in the report now submitted and the representations now made, the Sub-Committee agrees to modify the conditions of the Premises Licence in respect of the premises known as Yankee Lounge/London Road Club, 1st Floor, 178-184 London Road, Sheffield, S2 4LT, as follows:-

(a) by the addition of the following new conditions:-

- (i) a written Risk Assessment to be prepared, and to be on site, and available to address times and formats of operation when children are on site, and to address potential risks of crime and disorder;
- (ii) a CCTV system, to the specification of South Yorkshire Police, to be fitted, maintained and in use at all times whilst the premises are open (in line with the specification July 2016), and with the images being stored for 30 days, and being made available for inspection by responsible authorities;
- (iii) the Premises Licence Holder must ensure an appointed member of staff is capable of downloading CCTV footage in a recordable format, at all times the premises are operating;
- (iv) recordings must be provided to officers under the direction and control of the Chief Constable of South Yorkshire Police, and employees of the Licensing Authority, on request;

- (v) the recording equipment and all media used to record data shall be kept in a secure environment, under the control of the Designated Premises Supervisor, or other responsible named individual;
  - (vi) a monitor with a minimum 15 inch screen must be in such a position so as to be viewed by staff working in the premises;
  - (vii) in order to promote the prevention of crime and disorder objective, there shall be available, at all times, seating for a minimum of 50 covers and a maximum of 80 covers within the area facing on to London Road;
  - (viii) no amplified sound shall be played in the premises except through an in-house amplified sound system, fitted with a sound limiter, and settings of which shall have received the prior written approval of the Environmental Protection Service; and
  - (ix) there shall be a Personal Licence Holder on the premises, at all times, when alcohol is being sold; and
- (b) the removal of Condition 8 of Annexe 2 – Conditions consistent with operating scheme – ‘A suitable CCTV system shall be installed with recording facilities, such recordings shall be retained for a period of 31 days and made available, within a reasonable time, upon request by the police’.

(The full reasons for the Sub-Committee’s decision will be included in the written Notice of Determination.)