

SHEFFIELD CITY COUNCIL

Licensing Sub-Committee – (Statutory)

Meeting held 28 October 2024

PRESENT: Councillors David Barker (Chair), Joe Otten and Ann Woolhouse

1. APOLOGIES FOR ABSENCE

1.1 There were no apologies for absence.

2. EXCLUSION OF PUBLIC AND PRESS

2.1 No items were identified where resolutions may be moved to exclude the public and press.

3. DECLARATIONS OF INTEREST

3.1 There were no declarations of interest.

4. LICENSING ACT 2003: ZAMBEZI LOUNGE, 574-580 ATTERCLIFFE RD, SHEFFIELD, S9 3RA

4.1 The Chief Licensing Officer submitted a report to consider an application by the Licensing Authority, under Section 51 of the Licensing Act 2003, for a review of a premises licence in respect of Zambezi Lounge, 580 Attercliffe Road, Sheffield, S9 3QP (Ref No. 126/24).

4.2 Present at the meeting were Earnest Mudvidzwa (Licence Holder, Zambezi Lounge), Shelley Royston (Senior Licensing Enforcement Officer), Emma Rhodes-Evans (Licensing Enforcement and Technical Officer), Catherine Jarvis (South Yorkshire Police Licensing), Bob Singh (Environmental Protection Service), Samantha Bond (Legal Advisor to the Sub-Committee), Julie Hague (Sheffield Children Safeguarding Partnership) (via video link) and Clare Cummins (Democratic Services Officer).

4.3 Samantha Bond outlined the procedure to be followed during the hearing.

4.4 Shelley Royston presented the report, and it had been noted that the review had been submitted by the Licensing Authority, due to a breach of the Licensing Act 2003, and breaches of the licence conditions, as detailed in paragraph 2.1 of the report. Compliance checks had been carried out by the responsible authorities, warning letters had been issued, meetings had been arranged to offer support and advice to the licence holder by the responsible authorities and an action plan had been drafted and sent to the licence holder to assist with compliance of the licence. During the consultation period, further representations had been submitted by Sheffield Children Safeguarding Partnership, Environmental Protection Service and South Yorkshire Police. A letter of support to the responsible authorities had been received from the Health Protection Service, and all these representations were

attached at Appendix 'C' of the report.

- 4.5 Samantha Bond asked the licence holder if he had sufficient time to read through the extra evidence that had been received from the police on the morning of the hearing, and the licence holder said that he had. Samantha Bond stated that the Health Protection Service were not formally submitting a representation, but they had written a letter of support of the other responsible authorities, attached at Appendix 'C' of the report.
- 4.6 Emma Rhodes-Evans stated that the reason the application had been submitted for a review of the premises licence was due to unauthorised licensable activity, contrary to Section 136 of the Licensing Act 2003, and breach of conditions attached to the premises licence. Several visits by responsible authorities had been undertaken to the premises as detailed in the representation, attached at Appendix 'A'. Following the visits, further action had been identified as necessary. On 28 November 2023, a visit had been made to the premises by responsible authorities where several breaches of licence conditions had been identified. Sheffield City Council Licensing Service had issued a warning letter to the licence holder. Breaches of conditions had been found on a separate visit (30 April 2024), which had resulted in an Action Plan being issued to the licence holder. A final written warning had been issued for breaches of the licence conditions (September 2024). A visit by licensing staff had been undertaken (June 2024) to check compliance with the action plan, and a number of outstanding points had been identified. Issues with the toilets had been found and reported to the relevant responsible authority. The licence holder subsequently resolved the sanitation problems. Ms Rhodes-Evans informed the Sub-Committee that an investigation had been undertaken by an investigation officer into breaches of the Private Security Industry Act 2001, namely non-compliance issues by door staff, which were found to be the case. This case had now been closed. Further incidents of breaches of the premises licence had been evidenced by visits from licensing staff, Closed Circuit Television (CCTV) had been seen by licensing staff and reports from members of the public, in relation to the sale of alcohol outside of permitted licensing hours on a number of occasions. Ms Rhodes-Evans explained that there was a current active case with the Planning Enforcement Team, into the current use of the premises, but did not have any update about this investigation. CCTV also evidenced that Shisha had been being smoked in the licensed premises, in breach of the Smoke-free regulations under the Health Act 2006, and a warning had been issued to the licence holder by the Health Protection Officer. During the time detailed above, several meetings with responsible authorities and the licence holder had taken place to check for breaches of licence conditions and provide advice to the licence holder.
- 4.7 Following questions from Members of the Sub-Committee, and the Legal Advisor to the Sub-Committee, Ms Rhodes-Evans stated that:
- There had been no improvement evidenced by the licence holder and the licensed premises continued to operate and serve alcohol beyond the permitted licence hours, since it had opened.
 - No reason had been offered by the licence holder as to why he had not been present at a pre-arranged site-visit meeting on 16 October 2024.

- The licence holder had been offered significantly more support and visits to offer advice and recommendations, than other licensed premises.
- The decision to prosecute for unauthorised licence activities had not been made at the time of the hearing.
- Twenty-five conditions had been listed on the premises licence that had been considered appropriate to uphold the licensing objectives, and it was felt that no further conditions or variation of conditions would have been effective for the licence holder to be compliant.
- Some progress had been made in relation to some of the simple actions on the action plan, but full compliance had not been achieved.

4.8 Catherine Jarvis stated that the Licensing Service from South Yorkshire Police (SYP) had been involved with the licensed premises since the licence application was made in September 2023. Concerns had been raised with the licence holder by responsible authorities present at a meeting held on 19 September 2023, regarding the arrangements in place for the opening of the premises and the premises licence. SYP had raised concern in relation to the timings of the opening hours of the premises and an insufficient number of CCTV cameras installed in the premises. SYP requested several additional conditions to be added to the licence which the licence holder eventually agreed to. Information had been received by SYP from the Health Protection Service (HPS) that following a visit conducted by HPS on 28 November 2023, licence conditions had been breached. A warning letter had been issued by Sheffield City Council (SCC) Licensing Service in response. On 18 January 2024, Ms Jarvis and an SCC Licensing Officer had conducted a 'spot check' to ascertain if these former breaches had been resolved, but there was no one present at the premises. A visit had then been arranged with SCC and SYP Licensing Officers and the licence holder at the venue on 30 April 2024. Several of the licence conditions had been breached, some of which were the same as had been observed in November 2023 despite officers' advice to the licence holder, and a warning letter. Ms Jarvis referred to Appendix C of the report, Appendix 4, page 2 and informed the Sub-Committee that conditions 1, 2, 3, 4, 5, 6, 8, 10, 11 and 12 had been breached. An action plan was devised for the licence holder to comply with. SYP emailed the action plan to the licence holder on 7 May 2024 and included several supporting documents and electronic links to information the licence holder would need to assist him to comply with licence conditions, as detailed at page 1 of Appendix 5 of the report.

Further support had been sent and offered to the licence holder from SYP which had included a checklist of outstanding actions, due to be checked at the next planned visit to the premises by SYP. The licence holder was advised that if he had not understood what had been asked of him, or he needed help to comply with the licence conditions, he could contact the SYP licensing officers.

Further visits had been conducted and emails exchanged between the licence holder, SYP and other responsible authorities, but despite support and advice given to the licence holder, further breaches were uncovered. Ms Jarvis had recorded these breaches, and they had been included in the report at Appendix C. Examples of breaches of licence conditions included incomplete toilet cleaning logs and an incomplete door staff register. Ms Jarvis did note that some of the outstanding actions had been completed.

Ms Jarvis described an allegation of assault against a customer by a member of the door staff employed by the licence holder in July 2024. The alleged victim of the assault had sustained an injury to his finger and some damage to personal property. No official complaint to the Police had been made. Ms Jarvis had viewed the incident on CCTV at the premises and it revealed another breach of door staff records and a breach of permitted licensing opening hours, as people were observed entering and leaving the premises until 5.00 am. The CCTV did not show the actual assault.

Ms Jarvis explained that she had no concerns that the licence holder had not understood what had been explained and expected of him in relation to the licence conditions and knew that emails had been received by the licence holder, as he had responded to them. She felt that the licence holder had chosen to ignore the conditions in place.

A further report had been submitted by SYP and sent to the Sub-Committee on the morning of the hearing. This had been attached as a supplementary document to the report. It contained evidence and information from Police Officers and Ms Jarvis of activity at the licensed premises between the 4th and the 28th of October 2024. Ms Jarvis referred to the supplementary document and explained that a local resident had reported similar breaches of licensing hours, amplified music being played at a level that caused a noise nuisance, anti-social behaviour and customers fighting and urinating outside the premises. On 5 October 2024, officers had attended and entered the licensed premises and at that time did not witness any breaches of licence conditions. A meeting was arranged with the licence holder to discuss the complaint that had been made, and the licence holder re-arranged the first date and did not attend the second meeting on 16 October 2024, offering no explanation.

Police officers had attended on 12 October to find the licence holder in breach of conditions, allowing customers to enter the licensed premises after the permitted hours, and police officers had advised the licence holder again regarding being in breach of the license conditions. Further breaches were found when Police Officers entered the licensed premises at 1.15 am on 26 October to find the premises still open with customers inside, operating outside of permitted licensing hours, and the Police gave the licence holder words of advice regarding this incident.

Ms Jarvis made further reference to the supplementary document which showed an event advertisement found on the licensed premises Facebook page, exhibit CJ/1. This advertised the licensed premises to be open every Friday until 1.00 am. The premises licence permits alcohol sales until 12.00 am and the venue to close at 12.30 am. Exhibit CJ/2 is an advertisement for an event at the venue which showed the venue would have been open past the permitted licensing hours. Exhibit CJ/3 and CJ/4 advertised events at the venue where food would have been served, should the events have gone ahead. Ms Jarvis had referred this to the Food Hygiene Team, Environmental Protection. No assessment had been carried out on the premises regarding the storing and serving of food as the licence holder had not disclosed this was his intention.

Ms Jarvis submitted that no further conditions could have been added to the licence that would have enforced licence compliance and requested that the Sub-Committee revoke the licence.

4.9 In response to questions from Members of the Sub-Committee, Ms Jarvis said that:

- Extensive support had been offered to the licence holder in person, by email and materials had been sent to him. Full compliance would have been expected following this level of support from officers and responsible authorities.
- In her view, the licence holder had complete disregard for the licence conditions in place and was choosing to purposefully operate outside of the conditions.

4.10 The Chair of the Sub-Committee asked the licence holder if he had any questions for the Police. The licence holder told the Sub-Committee that he had been made aware of complaints of noise but stated that no test had been carried out by the responsible authority to test the noise level at the premises.

The Chair advised the licence holder that he would have an opportunity to explain his position to the Sub-Committee as the hearing progressed, but there was a process in place that would have to be followed.

4.11 The Chair of the Sub-Committee then asked Julie Hague to make representations from the Sheffield Children's Safeguarding Partnership (SCSP). She stated that she had been happy to answer any questions from the Sub-Committee as to why the Sheffield Children's Safeguarding Partnership will ask for a Prohibition of Children Order under the age of 18 if the Sub-Committee decides not to revoke the licence. She outlined the following concerns:

- The venue had not provided a suitable venue for children and young people, as evidenced by the responsible authorities.
- SCSP had concerns around non-compliance by the licence holder.
- When the venue was first opened, licence conditions restricted the access of children and young people and had a requirement that the Designated Premises Supervisor (DPS) attended Safeguarding Training and completed a safeguarding risk assessment for day-to-day use, and unusual or private hire parties in the venue, with immediate effect. Between October 2023 and May 2024, this condition had not been complied with. Following the implementation of the action plan in May 2024, the licence holder did attend the safeguarding training.
- Due to ongoing non-compliance reported by responsible authorities, Sheffield Children's Safeguarding Partnership requested a Voluntary Prohibition Policy be implemented to prevent under 18-year-old people entering the premises. This was agreed to by the licence holder, but he did make Ms Hague aware that in the future, he did intend to hold functions which included children and families at the venue. In light of this information, Ms Hague stated that a Voluntary Policy could not be relied upon.

4.12 Representations were made to the Sub-Committee from Bob Singh (Environmental Protection Service), and the following points were raised:

- The licence holder had failed in his obligations to promote the core objective in relation to public nuisance, continually breaching licence conditions.
- On 3 September 2023, the first complaint of noise by amplified sound had been received by the Environmental Protection Service (EPS) from a local resident, and this had been supported by video evidence. The following day, a complaint of the same nature had been received. On 19 September, a joint responsible authorities meeting had been arranged to discuss the complaint and an application for the grant of a premises licence that had been made by the licence holder. The licence holder had been made aware that the building was a Grade 2 listed building and not considered fit for purpose to contain noise of amplified sound and there was no planning permission in place for the building to operate as a night club. EPS had advised the licence holder that further advice should be sought from the Planning Service. Proactive advice was offered to the licence holder regarding the use of amplified sound to satisfy the requirements of Sheffield City Council EPS standards. Mr Singh stated that EPS had formally objected to the application for a premises licence, and they had recommended conditions, and a reduction in hours to support the Police and other responsible authorities to achieve the core objective of the prevention of public nuisance, and this had been agreed to at a later date by the licence holder.
- South Yorkshire Police, the Health Protection Service and EPS informed the local Planning Authority that the premises had been operating as a licensed premise. The local Planning Authority advised that there was a current investigation, but no update had been available.
- A late Temporary Event Notice (TEN) had been received on 2 October 2023 for a proposed event on the 7/8 October 2023, between 7.00 pm and 3.00 am. EPS and SYP objected to this application and there had been no grounds for appeal as the TEN had been received late.
- On 27 October 2024, the licence holder confirmed that all speakers had been removed from the premises and would only be reinstated when EPS conditions were satisfied, and that Hepworth Acoustics had been appointed to complete a noise survey and provide support with compliance.
- Following the action that had been taken by the licence holder, several further complaints of amplified noise and antisocial behaviour had been received by EPS, provided by a local resident. EPS passed this information to other responsible authorities which resulted in discussions between the organisations regarding the breaches of EPS conditions 13, 14, 15, 17, 18, 19 and 20, found in Appendix B of the report.
- EPS had received a copy of the noise impact survey completed by Hepworth Acoustics, included in Appendix C of the report, and noted three of the recommendations that the licence holder had been advised to install at a financial cost to himself.
- Further breaches of EPS conditions continued. A formal warning had been issued to the licence holder on 28 November 2023 and EPS explained that if further events took place and licence conditions breached, a Section 80 Abatement Notice, under the Environmental Protection Act would be

considered. The licence holder made assurances that no further live music or recorded music events would take place.

- The licence holder informed EPS that he had fulfilled one of the recommendations made by Hepworth Acoustic and had installed mechanical ventilation and was working with the landlord of the premises towards the other recommendations.
- Despite the formal warning issued, further breaches of EPS conditions had been reported and supported by video evidence from a local resident to EPS. Liaison between responsible authorities had taken place.
- Following a visit to the premises on 18 July 2024, it was noted that secondary glazing had been installed and there had been evidence of a noise limiting device, but this had not been installed.
- Further breaches of EPS conditions were reported and investigated and the licence holder was indeed found to be in breach of conditions, despite advice, guidance and support, site visits and warnings, including the possibility of enforcement action. EPS stated that the licence holder had been unwilling to co-operate with their service and was unable to effectively manage the premises. It is their belief that if the licence holder remained in place, breaches will continue.

4.13 As a result of questions from Members of the Sub-Committee and the Legal Advisor to the Sub-Committee, the following points were raised:

- A period of seven months passed by where no complaints from residents had been received. It transpired that there had been a breakdown in relationship between the resident and the licence holder.
- At the time of the hearing, there had been insufficient evidence to serve a Section 80 Abatement Notice to the licence holder as complaints of noise had been sporadic, not every weekend.
- The Night Time Enforcement Team had carried out regular checks on the premises on behalf of EPS.

4.14 The licence holder outlined his case to the Sub-Committee.

He said that it had been a difficult time for him and other African members of the community to meet, socialise, dance and listen to music, sharing their cultural background. A suitable and preferred time tended to be late in the evening. He apologised for staying open later than his agreed licence operating hours.

He asked the Sub-Committee to check and focus on some of the progress that had been made, as requested by responsible authorities.

He explained that the venue had brought members of the ethnic minority community together, and this had given them the opportunity to talk about their problems, for example mental health issues and not having to manage alone. He said that this venture had started as a business, but he felt that he had been supporting the community by providing a space for the community to gather. He explained that young people from Africa had found the culture in Britain to be very different from their own and described it as a 'shock'. The venue had given them a safe place to go after working long hours where they knew they would find other

African people. The licence holder described this as therapeutic and it relieved isolation and the chance to share cultures.

The licence holder said that he was willing to 'step down' as the Designated Premises Supervisor (DPS) and hand over the facility to the community. He had some customers that were more experienced at managing bars and clubs than he was. The licence holder stated that this was a relatively new business, and he had come across problems and 'shortcomings' as time had progressed.

The licence holder stated that he had committed a lot of money to the business to meet conditions and he and his staff had undertaken training as required. He did not allow smoking of illegal drugs on the premises. He requested the support of the Sub-Committee to keep the premises open for the community to continue to use.

4.15 In response to questions from Members of the Sub-Committee, the Legal Advisor to the Sub-Committee, South Yorkshire Police, Environmental Protection Service and the applicant, the following points were raised:

- The licence holder had requested the Sub-Committee focussed on the positive aspects of the time the venue had been open, and not the 'slip-ups'.
- The licence holder stated that he had not communicated some of the conditions to his friends and family who had stayed in the venue after permitted operating licence hours and apologised to the responsible authorities for the pressure this had put on their services.
- The licence holder disputed that one of the door security staff he employed had assaulted a customer. He explained that the male was not wearing a security badge and was not on duty that evening.
- The licence holder confirmed that he had found some of the support offered by responsible authorities to be helpful and other aspects, not so. He felt that after responsible authorities objected to the initial licence application, they have been trying to close the premises down ever since.
- The licence holder stated that he had not opened past 3.00 am in recent months.
- The licence holder stated that they were considering holding a BBQ based function at the venue but decided against this idea, and they do not serve food at the venue. If customers wish to purchase food, staff at the Zambezi Lounge had directed them to the Jamaican food business next door to the Zambezi Lounge on Staniforth Road. He could not remember the name of the business next door.
- The licence holder stated that if customers wanted to smoke shisha, he would direct them to another business close by where this activity is permitted. He confirmed that on one occasion a customer did bring shisha smoking paraphernalia into the premises, and this person was asked to leave. The licence holder stated he was aware this was not allowed under his licence conditions.
- Despite the facility of the balcony being used at a function as advertised on The Zambezi Facebook page, the licence holder confirmed that this was only an idea and the balcony, which is on the side of building, had not been used at a function.
- The licence holder confirmed that without an alcohol licence, the business

would not generate any income and would not therefore be viable. He explained that the community come together to relieve their stress and have a drink and therefore access to alcohol and an alcohol licence would be important to them.

- The licence holder confirmed that when the premises had been open outside of permitted operating hours, that customers would have been present in the premises, not just friends and family. He stated that for the business to progress, he felt that he needed to stay open for longer than was permitted in order to make money.
- The licence holder stated that he had checked the amplified sound noise levels outside of the premises and stated that it had not been loud, he had a noise limiter device and had installed double glazing windows to ensure this was the case. He was aware of the local resident that had complained of excessive noise, and they had spoken previously. The relationship had broken down at some point, although the licence holder stated that he did not know why.
- In order to satisfy responsible authorities, the licence holder stated that he thought that a new Designated Premises Supervisor and licence holder should be appointed to serve the community, when the process to review the premises licence had been completed. When questioned, it remained unclear if the licence holder was happy to relinquish his status of licence holder. He confirmed he was inexperienced at running this kind of business. He has approached an associate to query if the associate would be interested in taking over the business.
- It was explained to the licence holder that it was a criminal offence to sell alcohol outside of the licensing hours specified on the premises license and this was punishable by fine or imprisonment.
- The licence holder confirmed that he had not met all the conditions imposed by responsible authorities. His compliance was inconsistent.
- The licence holder stated that advertisements on the Zambezi Lounge Facebook page may show closing times which are later than the permitted licensing hours, or do not state a closing time, but that did not mean that the venue would close at that time, it could close earlier. If the venue was allowed to continue to operate as a late-night bar, the licence holder would consider advertising the opening times of the venue.
- Responsible authorities felt that they had been misled by the licence holder previously and questioned him why he should be believed that he would now carry out the actions he states he would if the licence were not revoked. The licence holder responded stating that everyone deserves a chance, and the community project will be overseen by another person. He said that this situation had caused him and his family some stress and he had lied previously in desperation to continue with the business to provide a service to the community. He apologised again.
- There was discussion around clarifying the licence holder's exact intention. He clarified that he did wish to remove himself as the Designated Premises Supervisor and the premises licence should be transferred to another person/business. He stated that he was concerned that the venue would not continue operating for the community to use.

4.16 All parties summarised their cases.

- 4.17 Shelley Royston outlined the options available to the Sub-Committee
- 4.18 **RESOLVED:** That the public and press and attendees involved in the application be excluded from the meeting, and the webcast be paused, 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.
- 4.19 Samantha Bond reported orally, giving legal advice on various aspects of the application.
- 4.20 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees, and the webcast re-commenced.
- 4.21 **RESOLVED:** That in the light of the information contained in the report now submitted, the representations now made and the responses to the questions raised, the premises licence in respect of the premises known as Zambezi Lounge, 580 Attercliffe Road, Sheffield, S9 3QP (Ref No. 126/24), be revoked on the grounds that the licence holder has consistently undermined the licensing objectives and breached licence conditions.
(NOTE: The full reasons for the Sub-Committee's decision will be included in the written Notice of Determination.)