

**SHEFFIELD CITY COUNCIL**

**Licensing Sub-Committee**

**Meeting held 21 June 2018**

**PRESENT:** Councillors Josie Paszek (Chair), Neale Gibson and Mick Rooney

.....

**1. APOLOGIES FOR ABSENCE**

1.1 No apologies for absence were received.

**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 - OHM, UNIT 14, WEST ONE PLAZA, FITZWILLIAM STREET, SHEFFIELD, S1 4JB**

4.1 The Chief Licensing Officer submitted a report to consider an application, made under Section 34 of the Licensing Act 2003, to vary the Premises Licence in respect of the premises known as OHM, Unit 14, West One Plaza, Fitzwilliam Street, Sheffield, S1 4JB (Ref No. 67/18).

4.2 Present at the meeting were Chris Grunert (John Gaunt and Partners, Solicitor for the Applicants), Matthew Ray (Operations Director, OHM, Applicants), Efe Omu (Director, SO Commercial, Applicants), Jonathan Round (Environmental Protection Service, Objector), Clive Stephenson (Licensing Strategy and Policy Officer), Samantha Bond (Legal Adviser to the Sub-Committee) and John Turner (Democratic Services).

4.3 Samantha Bond outlined the procedure which would be followed during the hearing.

4.4 Clive Stephenson presented the report to the Sub-Committee, and it was noted that representations had been received from the Environmental Protection Service, and were attached at Appendix 'C' to the report. Mr Stephenson also referred to the additional information received from the applicant's Solicitor, and which had been circulated to Members of the Sub-Committee at the hearing.

4.5 Jonathan Round made representations on behalf of the Environmental Protection Service (EPS), indicating that he was objecting to the increase in the opening hours and the plans to install speakers in the external area on the basis that both proposals would create a public nuisance in terms of increasing noise levels in the area. Mr Round stated that, when West One Plaza was developed, in 2010, there

was a 30% split in terms of retail, leisure and commercial development. However, over the years, the split had become more varied, and now comprised a higher percentage of leisure facilities, including restaurants and bars, which had caused a certain level of concern for residents living in the flats above. He stated that, over the last seven years, the Council had received five applications to increase the terminal hour of pubs in the development, with two having been granted and two refused. Mr Round indicated that he had particular concerns regarding the proposed use of external speakers which he believed, if not managed properly by the venues, or monitored adequately by the Council, could result in the surrounding licensed premises, which already had such speakers, playing their music louder in order to attract, and retain, customers. OHM had used Temporary Event Notices (TENs) (two in 2017 and three, to date, in 2018), which had resulted in a complaint of noise nuisance being received in respect of an event at the premises on 27<sup>th</sup> May 2018. Officers from the Night Time Enforcement Team had visited the premises following the complaint, and had witnessed a larger-scale event at Revolution which neighboured the premises, and which comprised external music and people dancing outside. As well as the potential for other licensed premises trying to compete with each other by playing music louder, Mr Round had concerns that the music being played through the external speakers, regardless of its volume, could be on 12 hours a day, seven days a week.

- 4.6 In response to questions from Members of, and the Legal Adviser to, the Sub-Committee, it was confirmed that legislation requires applicants to serve notice of such applications on the responsible authorities, as well as advertising the application on the premises, for a period of 28 days, and advertising the application in the local press. Mr Round stated that a high proportion of the residents in the flats above the premises were transient, and therefore tended not to formally object to such applications. Although the EPS had not taken any action with regard to complaints of noise nuisance at the premises, or taken any readings in respect of noise limits, there had been problems of noise nuisance when the premises operated as The Hop, which hosted several live music events a week, and the licensee of that premises had been requested to install additional sound insulation. The Service had also responded to complaints from local residents regarding noise caused by customers sitting outside Revolution. In addition, the Service had instructed the licensees of all premises at West One Plaza to monitor the external areas, requiring customers to keep noise levels down. Mr Round confirmed that the majority of complaints from local residents referred to noise nuisance in respect of the licensed premises and, following complaints received regarding The Hop, a condition had been added to the Premises Licence requiring that recorded/live music should stop at 22:30 hours. Since 2010, the Service had received 25 complaints of noise nuisance (external music and noise breakout) regarding licensed premises at West One Plaza. It was accepted, to a certain extent, that residents living in the City Centre tended not to complain of noise nuisance due to their acceptance that noise levels were likely to be higher than in other areas of the City. Whilst the Service had received a number of queries/complaints from residents living in the City Centre, very few were actually followed up as they did not want the inconvenience of officers attending their properties, and installing the required equipment, often late at night. The Service had particular concerns about the external speakers on the basis that noise sources were being introduced to an area where there was currently no noise, and that such an introduction was likely to

result in customers sitting in the area speaking louder. This was likely to result in a persistent inconvenience for those residents living within the immediate vicinity of the external area. Whilst the Council had not looked at the cumulative impact of such applications in respect of licensed premises at West One Plaza, the Service had suggested that the licensees be requested to adopt a more co-ordinated approach in terms of their respective operations, with the aim of minimising any adverse effects on local residents. The Sheffield City Centre Residents' Action Group (SCCRAG) had made representations in the past regarding noise nuisance at West One Plaza, particularly relating to incidents at an event during Tramlines one year. Apart from the complaint received regarding the event on 27<sup>th</sup> May, 2018, there had been no complaints received with regard to noise nuisance at any of the events held at the premises using TENs. In terms of a breakdown, by year, of the 22 complaints of noise nuisance received in respect of West One Plaza since 2010, three had been received in 2018, two in 2017, two in 2016, three in 2015, four in 2014, two in 2013, two in 2012 and four in 2010. The three complaints received this year related to the event held, using a TEN, on 27<sup>th</sup> May, 2018, and not to any of the other three events held at the venue, using TENs.

- 4.7 In response to questions from Chris Grunert, Mr Round confirmed that, apart from the incident on 27<sup>th</sup> May, 2018, all the interventions by the EPS with regard to the premises pre-dated Mr Ray's involvement. There was the possibility that, as the former premises (The Hop) had live entertainment, this was more difficult to manage in terms of noise breakout. With regard to events held at the premises and Revolution on 27<sup>th</sup> May 2018, and further to the photographs referred to by Mr Grunert, specifically the event at Revolution, Mr Round stated that, following a complaint received by the EPS, the Night Time Enforcement Team called at West One Plaza at around 21:30 hours, and the officers witnessed excessive noise within the courtyard of OHM. In terms of the external speakers, Mr Round stated that it would be very difficult to set the volume to a suitable level, particularly given a likely variation in the number of customers visiting the premises on different days of the week. Whilst accepting that the external area faced on to Fitzwilliam Street, resulting in there being a certain level of background noise, mainly from traffic, it was the aim of the EPS to minimise any noise levels that could be controlled, such as the music system in a licensed premises. Mr Round confirmed that the Council could take action if there was any breach of conditions relating to noise levels, and indicated that, following a complaint regarding noise nuisance relating to the use of external speakers at Los Iguanas, in West One Plaza, in 2017, the EPS took action and the volume limit was reduced. Mr Round confirmed that the Council had not taken any such action against OHM within the last 12 months.
- 4.8 Chris Grunert put forward the case on behalf of the applicants, indicating that there were three main elements of the proposed variation, namely the extension of the opening hours, the provision of late night refreshments and the use of external speakers. He stated that, since the premises opened as OHM, in May 2017, there had been no reported issues regarding noise breakout, and that there were no plans to change the arrangements with regard to live music, which was permitted up to 23:00 hours. With regard to the external speakers, Mr Grunert stated that it was proposed that the volume level would be set in consultation with the EPS, and could only be subsequently altered by an expert. He stressed that the applicant wanted the external speakers to play background music, for the benefit of those

customers who wished to sit in the external area. He referred to the incident on 27<sup>th</sup> May 2018, indicating that, in his opinion, the applicant had acted responsibly in terms of the noise levels used during the event, and that the main source of the noise had been the large speakers directly outside Revolution. Mr Grunert stated that, under the legislation, there was always the option of one of the responsible authorities requesting a review of the Premises Licence if there were issues regarding noise nuisance at the premises. In terms of representations, Mr Grunert pointed out that there had been no objections to the application from members of the public, as well as any from any representative bodies, such as SCCRAG.

- 4.9 In response to questions from Members of, and the Legal Adviser to, the Sub-Committee and Clive Stephenson, it was confirmed that the premises had opened in May 2017, and that all other complaints of noise nuisance regarding the premises related to when it was The Hop. In terms of noise attenuation measures, the applicants had been requested, as part of their application for a Premises Licence, to install further insulation material. The reason for the external speakers was simply to attract more customers to the premises, and to create a pleasant and welcoming atmosphere. It was accepted that as people drank more alcohol, they tended to talk louder but, with the volume level having been set, there was no way, other than a further application to vary the Premises Licence, that the applicants could increase the volume. Whilst the applicants were happy to liaise with the EPS in terms of the volume of the music playing through the external speakers, they considered that the level should be relative to the background noise in the area. The applicant has attempted to have constructive discussions with the EPS throughout the application process. However, the EPS has not fully engaged as its view is that any additional noise in the area would lead to a public nuisance and, as such, does not feel there is an 'acceptable level' that could be reached. The applicant stated that the license trade was a very competitive market, and some customers like to sit outside, either to smoke or simply to talk, particularly during the summer months, and that having music played externally would simply make it a better experience for the customer. The applicants had chosen to apply to the Licensing Authority first, as opposed to the Planning Authority, as there were benefits to the application which could be achieved immediately. It was believed that additional noise insulation material and secondary glazing had already been installed in the premises by the previous occupiers, and that the applicants had installed further insulation material, as part of the application, prior to opening in May 2017. There was very little, if any, noise breakout from the premises when all the doors and windows were closed. It was proposed that the music to be played through the external speakers would reflect the music being played inside the premises. In terms of the request to extend the opening hours, as part of the application, the applicants simply wanted the flexibility to take advantage of the extended times if and when required. Whilst there were no immediate plans to have any forms of agreement with the licensees of the other licensed premises within West One Plaza, the applicants intended on applying for further TENs if they wanted different or bigger events at the premises. The style of music played at the premises was commercial R&B and chart music, with a DJ playing on Friday and Saturday nights. The licensee did talk to other licensees of the other premises in West One Plaza, and was a member of UNITE which comprised a number of licensees in the City Centre. The applicants pointed out the location of the premises' kitchens on the maps circulated, and indicated that the kitchens would

close at 21:00 hours, with the extractor fans shutting off at approximately 22:00 hours.

- 4.10 In response to questions from Jonathan Round, it was stated that the applicants had spoken to their landlords (City Estates) in connection with the proposal to increase the opening hours. The applicants, however, had not spoken to the other licensees of premises in West One Plaza regarding the proposal for external speakers, or the proposed increase in the opening hours, mainly as they were considered only minor changes, and were not expected to have an adverse impact on them. The applicants had not really given consideration to the volume of the music to be played through the external speakers, and would deal with this, including liaising with the EPS, when the application for planning permission was to be submitted. It was hoped that the volume level would be set in recognition of current background noise levels, and at a level which would not cause any public nuisance. The applicants were more than happy to accept guidance from the EPS in connection with setting an appropriate volume level. The applicants were fully aware of the extent of the TENs, indicating that they were entitled to have 15 such events, covering a period of 21 days in a period of one year.
- 4.11 Jonathan Round summarised the case on behalf of the EPS.
- 4.12 Chris Grunert summarised the case on behalf of the applicants.
- 4.13 Clive Stephenson reported on the options open to the Sub-Committee.
- 4.14 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.
- 4.15 Samantha Bond reported orally, giving legal advice on various aspects of the application.
- 4.16 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees.
- 4.17 RESOLVED: That the Sub-Committee agrees to vary the Premises Licence in respect of the premises known as OHM, Unit 14, West One Plaza, Fitzwilliam Street, Sheffield, S1 4JB (Ref No. 67/18), in the terms requested, subject to the approval of the Planning Authority and subject to the addition of the following conditions:-
- (a) the volume of the external speakers to be set at a level agreed between the Environmental Protection Service and the applicants; and
  - (b) the insulation measures at the premises be at such a level as not to result in any noise breakout which causes issues for residents living above the premises.

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