

LICENSING PANEL B

THURSDAY, 19 OCTOBER 2023 AT 7.00 PM
REMOTE MEETING VIA MICROSOFT TEAMS. THIS MEETING CAN BE
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SUPPLEMENTARY AGENDA

		Wards
7.	THE SQUARE TAVERN, 26 TOLMER'S SQUARE, LONDON, NW1 2PE	Regent's Park

The following supplementary information is included:

- A list of additional conditions proposed by the Licensing Responsible Authority (**Page 3**)
- Documentation submitted on behalf of the Licence Holder, including proposed conditions and an Outside Area Management Plan (**Pages 5 – 14**)

SUPPLEMENTARY AGENDA ENDS

Issued on: Tuesday 17 October 2023

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Additional Conditions Proposed by the Licensing Authority Responsible Authority

The Licensing Authority Responsible Authority has proposed that the application be amended to remove off sales so that the premises is **licensed for on sales only**.

The Licensing Responsible Authority has also proposed the following conditions:

1. The Challenge 25 scheme must be operated to ensure that any person who appears to be under the age of 25 shall provide documented proof that he/she is over 18 years of age. Proof of age shall only comprise a passport, photo card driving licence, an EU/EEA national ID card or similar document, an HM Forces warrant card, a card bearing the PASS hologram, or any electronic or biometric age verification technology approved by the licensing authority.
2. That the premises, as well as the internal CCTV already installed, also install CCTV to cover the outside of their premises. All such recorded footage shall be securely retained for a maximum of 31 days and recordings to be made available to council and or responsible authority officers on request.
3. That members of staff who are able to operate the CCTV and take copies of the recordings and provide this to officers on request.
4. No drink should be allowed outside the venue after 20:00hrs and all persons wishing to smoke shall leave their drinks inside to smoke outside.
5. The maximum number of people allowed out to smoke shall not exceed 10 people at any time.
6. No smoking outside the premises after 21:00hrs.
7. All tables and chairs outside of the venue shall be put out of use by 21:30hrs.
8. Collection of empty bottles glasses, crockery and cutlery outside of the venue shall not be later than 20:30hrs.
9. Suitable and sufficient refuse receptacles shall be provided by the premises.
10. The premises shall sign up for the "Ask for Angela" scheme.

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BEFORE THE CAMDEN COUNCIL LICENSING SUB-COMMITTEE

IN THE MATTER OF A REVIEW OF THE PREMISES LICENCE

SQUARE TAVERN 26 TOLMERS SQUARE NW1 2PE ('THE PREMISES')

SKELETON ARGUMENT

INTRODUCTION

1. I am the solicitor for Punch Partnerships (PML) Limited ('Punch'), the premises licence holder ('PLH') at The Premises.
2. The Premises is operated by Brackenbury Brews Limited. Faye Kewell and Peter Ivanisevic are directors of the company ('The Operators'). They have submitted representations that can be found at pages 107 to 114.
3. For the purposes of this skeleton argument and in relation to submissions before the Licensing Sub-Committee Punch are supporting Brackenbury Brews Limited and their management team operating The Premises.
4. The report from the licensing officer can be found at page 61 onwards of the Agenda Pack.

THE PREMISES

5. The Premises is a long-established pub, serving the local residents of Tolmer's Square and beyond, as well as the businesses, visitors and tourists who come to the area. Faye Kewell sets out in detail the Operator's management of the premises since they took it on in August 2022 in her representation at pages 107 to 109 of the Agenda Pack.
6. The premises operates as a pub, with food served daily to 10pm, a café, work-space and event space for locals. The flexibility of the offer and the unique location are integral to the Premises' identity. The ambiance provided by the location is something The Square Tavern is renowned for.

LOCATION OF THE PREMISES

7. Whilst the premises is not visible from the roads, it sits at the conjunction of a very busy intersection of Hampstead Road and Euston Road. The area is close to Euston Square and Warren Street tube stations, walking distance from Euston train station and in very close proximity to a number of bus stops that serve as an interchange for people travelling to all parts of London. A map can be found at page 65 of the Agenda Pack.

8. There is also a large mix of businesses, university buildings and the UCL Hospital nearby, as well as other leisure and retail outlets in the area, including a number of grocery stores selling alcohol at prices significantly less than those found at The Premises. These include a Sainsbury's Local on Hamstead Road and Euston Food and Wine, which is meters from The Premises.

9. Tolmer's Square sits back from the junction. Despite its proximity to the main roads, the buildings surrounding it give the square a sense of being 'out of the way'. However, it should be noted that it also has entrances and exits on three sides of the square. The Premises' main entrance is on the square itself, as is the external seating area.

10. The corner of the square where the Premises is located is non-residential and serves primarily as a secondary employee access for the NHS building to which the Premises is connected, as well as the entrances to the Premises itself.

11. The area suffers from anti-social behaviour which has absolutely nothing to do with the Premises. This has included homelessness, street drinking, drug taking, public urination, music being played late at night and noise from people passing through the square. Public oversight of the square by the management and customers of the Premises is more likely to have the effect of putting people off engaging in anti-social behaviour that might otherwise proliferate further.

THE REVIEW

12. It is also significant to note that Tolmer's Square is not a private space for residents.

- a. it is a cut through for people travelling between the stations to the east and Hampstead Road to the west
- b. it is an area with known issues of drug taking, street drinking and vagrancy
- c. it is a space used by non-residents and non-pub customers to gather and often drink alcohol brought from elsewhere

13. In June and July 2023, tents were set up by rough sleepers who then caused anti-social behaviour. The Operators attempted to contact the authority to get the people moved on for the benefit of all of the Square but did not receive a response. However, the pub being open and trading meant that there were 'eyes and ears' on the activities of the rough sleepers.

14. For further context, the Operators kept a snapshot record of anti-social behaviour not related to customers of the premises that they have witnessed during early August. This is not a complete record of all anti-social behaviour just that directly witnessed. These include:

- a. 2 young men drinking in the square and 2 older men playing music and drinking at 11pm (2 August)
- b. 3 men witnessed drinking their own alcohol at 8pm (3 August)
- c. 2 men smoking drugs in the square at 03:57pm (7 August)
- d. Man in square drinking own alcohol at 2.15pm (9 August, returning on the 10 August)
- e. 2 men smoking crack under a jacket on the far side of the square from the Premises 14:42 (10 August)
- f. Group of 6 young people judged to be in their early 20's drinking and smoking in the Square for a prolonged period from 22:18 onwards (11 August)
- g. 2 men smoking crack at 19:32 (13 August)

15. More recently, 2 men were witnessed listening to music, smoking and drinking in the square at 2-3am. One of the men threw up and then urinated in a doorway before they left. Again, this had nothing to do with customers of the Premises.

16. It is also worth noting that the operators have personally witnessed customers from The Refinery on Regents Place, which is a large and extremely busy pub, use Tomer's Square as a direct thoroughfare from the Refinery to Euston Station. On a number of occasions, noise complaints have been made to the Operators when the Premises has not been trading because of congregations of these customers. Glassware and bottles are found in the morning littered throughout the square. Some are clearly identifiable as from elsewhere as they are branded with products not served at The Premises. The Operators clear these almost on a daily basis for the benefit of the square as a whole.

17. With the exception of the 30th June 2023 and bottles being emptied on 14 July 2023, the YouTube footage submitted in support of the review discloses nothing one would suggest undermines the licensing objectives. Noise is not excessive and indeed there are indications of active management of customers who in the main remain close to or within the boundary of the Premises.

18. It is submitted that the Operators have worked hard to manage the premises, to ensure the external areas are properly supervised and customers behave properly. It is fair to note that no management plan will be perfect- especially where the Square is not solely used by residents or

customers of the Premises. However, to suggest that the management do not take their duties seriously is, it is submitted, without merit or evidence. Whilst there have been occasions where standards have not been as high as the Operators would expect from their staff, when this has been pointed out to them, they have worked hard to put measures in place to ensure these are dealt with.

19. conditions have been proposed by both the applicant for review (supplemental papers) and Esther Jones on behalf of the Licensing Authority (pages 91 and 92 of the Agenda Papers). With respect to both, if either scheme were adopted, it would effectively cause the premises to close. The net effect of the conditions in the round would be to make the premises unviable. We would hope that this was not the intention. The premises licence holder has proposed a comprehensive set of conditions which can be found at Appendix 1 to this skeleton. It is submitted that this is a proportionate and reasonable response to the review.

20. One of the conditions the PLH has proposed requires an external area management plan to be implemented. A copy of that draft plan can be found at Appendix 2 to this skeleton.

THE LAW

21. A review application effectively engages the Licensing Sub-Committee's discretion to arbitrate between the parties and determine whether the premises has undermined the Licensing Objectives or not. The obligation sits with the applicant to evidence their assertions and demonstrate that, on the balance of probability, their allegations amount to an undermining of one or more of the licensing objectives. Thereafter, having weighed the evidence, it is for the Licensing Sub-Committee to take one or more of the following actions:

- a. Do nothing
- b. Issue an official warning
- c. Add/ remove conditions on the premises licence
- d. Remove a licensable activity
- e. Suspend the premises licence
- f. Revoke the premises licence

22. Any action taken must follow the guiding principles of proportionality and must comply with the legal test of *Wendsbury reasonableness*.

23. Any action taken must be *appropriate and no more than necessary* to deal with the issues deemed to undermine the licensing objectives.

24. The starting point for any discussion of public nuisance is that not all noise is a nuisance and

not all nuisance is a public nuisance- the legal standard set out in the Licensing Act. This is self-evident, of course, but worth exploring in a little more detail.

25. We all have to live with certain levels of noise in our lives; be that road traffic, smells from a local factory, church bells or the chants of a crowd at a football match. Likewise, noise of customers outside a pub are unlikely to be considered a public nuisance, if within the bounds of what would ordinarily be generated by groups of people enjoying themselves. Likewise, some noise from customers leaving a premises should be expected by persons living next door to a pub, restaurant, music venue or sports ground. A single incident of music outbreak from before the review was submitted does not indicate a pattern of behaviour that requires action to be taken. There is no evidence in the applicant's review about repeated issues of music disturbance at the Premises.

26. It is not enough for any party to state that they are disturbed by noise. They must prove that the specific nuisance they say occurs falls within the legal definition of a public nuisance. It is important to remember that the overriding principle of public nuisance is to balance the rights of individuals with the public interest. The Premises licence holder has a right to peaceable enjoyment of their property (the premises licence) in the same way the residents do. The matter before the Licensing Sub-Committee is about finding the correct balance.

CONCLUSION

27. The S182 Guidance to the Licensing Act states at para 9.44 states:

*Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end ... **The authority should aim to consider the potential burden that any condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business... The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.***

28. The evidence in this matter shows the following:

a. Neither the police, nor Environmental Protection, saw fit to support the review of the licence. Certainly, there is no support for a reduction in hours from the Responsible Authorities;

b. The management at the premises have put in place a significant number of measures not only to prevent public nuisance but also to monitor the potential for public nuisance. This is reflected in the conditions the Premises Licence Holder has put forward.

c. The videos provided as evidence by residents in the main and with two notable exceptions do not disclose any noise that would be considered a public nuisance. That there is some noise heard is not enough for the reasons stated above to reach the level of public nuisance. Some of the recordings do not disclose the noise source as the Premises and others are at times where the licence expressly allows customers outside- again with levels that are not above what would be expected from customers outside a pub acting reasonably.

29. In this case, it has been submitted by the operators that the reduction in hours and imposition of restrictive conditions suggested by the applicants and/ or the Licensing Officer would have serious financial consequences for the continued operation of the premises. This is a relevant consideration for the Licensing Sub-Committee.

30. The amended operating schedule, which can be found at Appendix 1, sets benchmarks for the proper management of the premises to promote the licensing objectives whilst also ensuring that officers can investigate allegations against the Premises and assess whether the Operators are properly engaging with the residents. In our submission, this represents a fair, appropriate and proportionate response to the review application as submitted.

PIERS WARNE

LEGAL DIRECTOR, TLT

BEFORE THE CAMDEN COUNCIL LICENSING SUB-COMMITTEE

IN THE MATTER OF A REVIEW OF THE PREMISES LICENCE

SQUARE TAVERN 26 TOLMERS SQUARE NW1 2PE ('THE PREMISES')

APPENDIX ONE

Square Tavern: Proposed Conditions

Remove the following conditions from Annex 2:

16, 19, 21, 24

Conditions added to the licence:

1. CCTV system to be in operation to cover all licensable areas (except toilets) to which the public have access. This includes any outdoor seating areas
2. The CCTV system is to be operational at all times when licensed activities are being carried out. The system is to be adequately maintained and be capable of downloading recorded material onto removable media.
3. CCTV footage will be made secure and retained for a minimum of 28 days.
4. At all times when the premises are open to the public there will be a member of staff on duty who is conversant with the operation of the CCTV system and who is able to download immediately any footage as requested by the police or an officer of Camden Council. Production of CCTV footage to be provided in line with data protection requirements.
5. Staff to be trained and understand their responsibilities in the sale and supply of alcohol.
6. Staff Training logs to be kept and maintained and be made available upon request by any responsible authority.
7. An incident log shall be maintained and kept at the premises, and made available on request to the police or licensing authority an authorised person which will record the following:
 - (a) All crimes which occur within the venue.
 - (b) All ejections of patrons.
 - (c) Any incidents of disorder.
 - (d) Seizures of drugs or offensive weapons.
 - (e) Refusal of entry/ sale of alcohol due to being underage.

8. In relation to the sale of alcohol the DPS premises will draft and implement adopt a Challenge 25 policy. Any person who appears to be 25 years of age or under will be asked to provide identification to prove that they are in fact over 18. The only acceptable forms of identification are a passport, a photo style driving licence, a military ID card-or, a PASS logo ID card or any other form of identification authorised by the Home Office for the purpose of age verification relating to sales of alcohol.
9. Notices to be positioned in prominent positions within the venue within the toilets at the premises stating: "ANY PERSON FOUND USING OR IN POSSESSION OF ANY DRUGS WILL BE BANNED FROM THE PREMISES AND REPORTED TO THE POLICE".
10. Notices will be displayed requesting customers to leave the premises quietly. These notices will be placed at all ingress / egress exits from the premises.
11. The outside areas will be closed to customers, except customers going outside to smoke from 2200 daily.
12. All doors and windows will be kept shut during any provision of live or amplified music or entertainment.
13. A complaints log will be maintained and all complaints from residents will be recorded therein. For the avoidance of doubt, this log can be incorporated within the incident log, so long as complaints are clearly identified as such. Any complaint logged will include date, time, name of complainant (if known) and reason for complaint. Any action taken in relation to that complaint to also be recorded.
14. An external area management plan will be drawn up and implemented at the premises. The management plan will be made available to the licensing officer or police on request. The plan will detail measures for controlling customers and regular collection of crockery and glassware.
15. All external furniture will be rendered unusable to the public by 22:15 daily.
16. Bottle bins will be emptied internally and only placed outside for collection between 08:00 and 20:00 hours on any day.
17. The premises will sign up for the 'Ask Angela' scheme.

BEFORE THE CAMDEN COUNCIL LICENSING SUB-COMMITTEE

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APPENDIX TWO

Outside areas management plan

GENERAL REQUIREMENTS

The external area will be closed to guests **from 10pm**. After this time guests will be allowed outside to smoke in the designated smoking area located outside the premises in the bricked off area.

Glasses will be permitted for smokers as there is a risk to customers of drink spiking in asking them to leave drinks behind. However, the area is to be monitored to ensure customers are not gathering there to talk in groups but are only there if they are smoking and once they finish they come back inside. **After 10pm a maximum of 10 persons will be permitted outside to smoke. A clear sign will be at the exit to this effect.**

Signs will be displayed in prominent positions and by the entrances and exits leading to the outside area to make our guests aware of the consequences of late night noise and to be respectful to the neighbours. Signs will also state the closing times of the external areas.

When the external area is in use, staff will be designated to ensure that guest's behaviour is regularly monitored to prevent unnecessary disturbance to residents. This will include regular glass and crockery collection.

- Guests acting unreasonably, such as shouting, singing or swearing excessively, will be reminded that as a courtesy to neighbours and other guests that noise must be kept to a reasonable level.
- If the guests persist, the Duty Manager should be informed
- If required, The Duty Manager should again ask the guests to reduce the noise to a reasonable level or they will be asked to come inside.
- The external area will close at **10pm** and all customers will be asked to move inside 15 minutes in advance of this time to ensure the area is clear in good time.

Particularly busy evenings

When the outside area is likely to be very busy, in particular during hot sunny evenings, the Duty Manager will appoint a single person to supervise the areas ('the supervisor) **from 7pm onwards**. The supervisor will be instructed that their sole duty will be the supervision of the outside areas until they close or unless for any other reason the areas are empty (such as bad weather forcing all or most guests inside).

The supervisor will be also be responsible for keeping the outside areas tidy of glasses and crockery. The supervisor may be given additional roles and responsibilities that are located outside as required.

- Guests acting unreasonably, such as shouting, singing or swearing excessively, or not moving on request will be reminded that as a courtesy to neighbours and other guests that noise must be kept to a reasonable level.
- If the guests persist, the Duty Manager should be informed
- If required, The Duty Manager should again ask the guests to reduce the noise to a reasonable level or they will be asked to leave the outside area.
- If they continue to make noise, they will be required to leave the outside area.

Dealing with anti-social behaviour in Tolmer's Square

Unfortunately, the area attracts people who will use the Square for the following:

- Taking drugs
- Street drinking
- After-work drinking with alcohol bought from local supermarkets
- Setting up tents (homeless issues)
- Using the area for anti-social behaviour such as public urination

If you witness or are notified of any of these issues, you must notify management if the activities are considered anti-social. In any event, ensure that your observations are noted in the book kept for this purpose.

Dealing with complaints from residents and ensuring staff comply with the complaint recording condition

In the event of any complaint being received this will be dealt with immediately by a member of the management team and the details recorded in writing.

A complaints record book will be collated and a record will be kept at all times. If a complaint about noise is received, the log will record:

- Date and time of complaint
- Name of complainant (if known)
- Nature of complaint
- Any remedial action taken

This policy and the complaints log will be regularly reviewed by the management team to identify any reoccurring incidents. All management team will be effectively trained on how to deal with complaints and accurate record keeping.

All staff members required to undertake duties in relation to this management plan will be asked to read a copy of this plan and a copy will be available to staff during their shifts if needed.