

BOROUGH OF REIGATE AND BANSTEAD

LICENSING SUB-COMMITTEE

Minutes of a meeting of the Licensing Sub-Committee held at the Town Hall, Reigate on Monday 15th October 2012 at 10.00 a.m.

Present: Councillor S.N. Farrer (Chairman); Councillors Mrs. C.E. Poulter and F. Kelly.

6. APOLOGIES FOR ABSENCE AND RECONSTITUTION OF THE SUB-COMMITTEE

Membership of the Sub-Committee was as set out above.

7. DECLARATIONS OF INTEREST

There were no declarations of interest.

8. LICENSING SUB-COMMITTEE PROCEDURE RULES

RESOLVED that the Procedure Rules for meetings of the Licensing Sub-Committee be noted.

9. APPLICATION FOR A REVIEW HEARING: DOG AND DUCK PUBLIC HOUSE, REDHILL

The Sub-Committee considered an application, made by Surrey Police, for a review of the premises licence at the Dog and Duck Public House in Redhill relating to the Licensing Objectives of the prevention of crime and disorder; public safety and the prevention of public nuisance.

The report before the Sub-Committee set out the police application in full including an evidence bundle in support of their application for a revocation of the premises licence. The evidence contained:

- The notice of determination following the review of the Dog and Duck's licence on 30th March 2012;
- An incident log from 1st April 2012 to 21st July 2012;
- A visit log from 1st April 2012 to 24th April 2012;
- Copies of Police statements;
- A copy of a statement from a Reigate and Banstead Licensing Officer;
- A copy of a statement from a Surrey Trading Standards Officer;
- Additional police and CCTV operator statements.

The Sub Committee also received 18 representations from interested parties in support of the management of the Dog and Duck during the relevant period.

The Sub Committee were reminded that, on 30th March 2012 that they had considered a review of the premises licence brought by Surrey Police which had resulted in 11 conditions and 3 undertakings being attached to the premises licence. It was noted that the premises licence was transferred from Marston's PLC to Mr Owen Mahoney in April 2012. There were no complaints recorded against the premises that required involvement from the licensing team.

A written submission on behalf of the Chief Constable of Surrey to further support the review of the premises licence was tabled at the meeting. The Sub Committee also received an updated incidents and visits report that had been prepared since the completion of the review application.

The Sub Committee adjourned at 10.05am to consider the additional information and resumed at 10.18am.

The hearing followed the Licensing Sub Committee procedure rules, operated at the discretion of the Chairman.

The applicant and the licence-holder were represented at the hearing. It was noted that other interested parties were in attendance and wished to speak in support of the licence holder.

The Licensing Officer presented the review application and reported that the evidence submitted as part of the application had been supplied for open submission by the applicant, Surrey Police. The review had been requested following the alleged failure of the Dog and Duck PH to implement conditions which had been attached to the premises licence arising from the review hearing on 30th March 2012.

The following points were noted during the parties' submissions:

On behalf of the applicant (Surrey Police):

- The public house had demonstrated a pattern of failure to implement the 11 new conditions and 3 undertakings put in place as a result of the review hearing on 30th March 2012, showing a lack of respect for the licensing regime which in turn showed a failure to deal with the problems that had required the imposition of the conditions;
- In view of the continuous problems that the police had encountered with the public house their request for a review was to seek a revocation of the premises licence;
- Concerns still existed in relation to the licence with respect to the four licensing objectives;

- The representations also had in mind Home Office guidance and the statement of licensing objectives adopted by the authority which emphasised the role of the authority was to ensure the promotion of the crime prevention objectives. In particular the guidance indicated:

“It was important to recognise that certain criminal activity or associated problems may be taking place or have taken place, despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority was still empowered to take any appropriate steps to remedy the problems”
- Despite the conditions imposed in March the standards in place at the Dog and Duck were lamentable. The Home Office guidance also indicated that:

“The police should be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives”
- In support of the request to revoke the licence the police identified that:
 - The licensee had ignored the conditions put in place following the last review, which the police regarded as being essential;
 - the licensee had demonstrated a failure to treat the licensing regime with due respect and deference, therefore how could the licensing authority be satisfied that the licensee would respect any of their decisions in these circumstances;
 - the failures were not merely cosmetic or bureaucratic. In failing to appropriately and carefully search customer bags, prevent drugs dealing, and enforce a challenge 25 policy the licensee was directly contributing to an increase in crime and disorder;
 - given the pre-eminence that the authority should afford to police representations it was suggested that the details of this evidence should cause the authority significant concern, which should be translated into a revocation of the premises licence.
 - specific consideration should be applied to the witness statement from PC Stevens dated 20th July 2012 which provided evidence that the conditions on the licence had not been complied with including failures to display notices, failure to search customers by the door staff for drugs; and that no challenge 25 policy was in operation.
- In conclusion the applicant indicated that given the record of failure which the police evidence records, and the on-going inability of the Licensee to meet his obligations, that the authority should revoke the license.

On behalf of the licence holder (Dog and Duck):

- The Sub Committee were asked to note that the reasons for the review in March 2012 were not part of the papers that formed the current review. This was material because they provided the rationale for its decision to apply the additional conditions to the licence. The Sub Committee were advised that the situation at the Public House had improved significantly since the last review and the trend of decline that had been witnessed at that stage was no longer the case;
- It was suggested that the failures that had been identified to support the hearing were more 'administrative' rather than a failure to uphold the licensing objectives.
- It was acknowledged that the March review had considered a range of underlying issues in relation to the licensing objectives which were considered to be no longer an issue as a result of action that had been taken by the Premises license holder;
- It was put to the Sub Committee that the basis of the request for the current review were in effect 'technical failures' which had been identified by the multi agency visit that took place on 21st September 2012. It was contended that, as the review had demonstrated, that most of the conditions imposed onto the license had in fact been complied with.
- In respect of condition 7 it was noted that a Drugs Policy had now been put in place and a copy of the document was provided to the Police on 5th October. This condition had been taken seriously and the Drugs Policy presented was considered to incorporate all current control measures to alleviate such activity. It was acknowledged that the condition required the submission of this Policy by 1st June 2012 and that it had been delayed because of confusion between the brewery and the designated premises supervisor. It was therefore put to the Sub Committee that in effect the failure was to comply with a date rather than the provision of the Drugs Policy.
- The Sub Committee were asked to note that Police Officer Olly Smith (Team Sergeant) (who had been heavily involved in the March review hearing) didn't know that the current review had commenced. It was noted that although he had been on alternative duties recently it didn't appear correct that he had not been consulted on the current review given his earlier involvement;
- Reference was made to the Multi Agency visit which took place on 13th July. It was emphasised that the breaches that had been identified at that time were examples of the technical nature of the failure to implement the conditions rather than a failure to comply with the licensing objectives. Furthermore the Sub Committee were asked to note that these technical breaches of the conditions had almost all been remedied and implemented now;

- In the circumstances, although it was very regretful that the technical failures had occurred, as it was not the case that the Public House had failed to observe the objectives of the licensing policy they wanted to place on record that they intended to appeal to the Magistrates should the Sub Committee uphold the revocation request. The Sub Committee was requested to take a common sense approach to resolving the matter rather than requiring it to be the subject of an appeal (including all the associated costs that this would introduce);
- In relation to condition 4 (SIA staff on duty) it was noted that the visits that took place on 7th, 21st, 28th and 29th September documented that door staff were on duty. It was confirmed that the door staff search everyone arriving between the hours of 8pm and 2am on Friday and Saturdays;
- The visits had also identified the number of customers present on those occasions. The Sub Committee were asked to note that the top end number of customers on Fridays and Saturdays was approximately 30 people up to around 9.30pm and after 10pm the numbers were more significant, although these were mostly regulars;
- The Sub Committee were asked to note that the ratio of SIA door staff per customer should be 1:75 and therefore that up to 10pm it was suggested unnecessary to have 3 SIA staff on duty and that 2 would be sufficient for this period;
- It was considered that the underlying problems that had resulted in the imposition of conditions 4 and 9 in relation to the SIA staff being on duty had proved excessive in practice. It was therefore requested that these conditions be amended to start from 10pm.

Note: Clarification was sought as to whether the current review allowed for the amendment of conditions. It was confirmed that this was possible, but that it was an irregular practice to adopt.

- Reference was made to the 4 incidents that had been reported by the Police between July and September. It was contended that these appeared to be mostly as a result of relationship or family disputes rather than a failure of the Dog and Duck to observe the licensing objectives as they had happened outside the premises.
- In concluding it was indicated that the root causes of the issues that had been identified in the first review were being dealt with and that they apologised for not complying with the conditions sooner.
- The Sub Committee were requested not to proceed with the revocation of the licence and that if a sanction was required that this could be given by utilising S136 of the Licensing Act to issue a warning to the premises if necessary.

The Sub-Committee adjourned at 11.23 am and resumed at 11.32am

The Chairman invited other interested parties to address the Sub Committee.

In support of the Dog and Duck: Mr. MacPherson

- As an experienced publican, he considered that Mr Mahoney (the landlord of the Dog and Duck) was the nicest, kindest landlord that he had ever the opportunity to drink with. He had never seen an incident in the Dog and Duck, but acknowledged that there had been incidents outside the pub.
- If the pub was to close it would have a serious impact on the community. Mr Mahoney should have been given a reasonable time to implement new conditions before reviewing.
- Mr MacPherson acknowledged that the Police had a difficult job to deal with drug issues, but that this was outside of the Dog and Duck.

In support of the Dog and Duck: Mrs O'Doherty

- As a local Redhill resident she had frequented the Dog and Duck for a period of 40 years and it was a pub that catered for all in the community.
- Mrs O'Doherty confirmed that she had had her bag searched by the door men and that she had been told that it was a policy of the pub to do so.
- Reference was made to the letter of representation that had been submitted for the consideration of the Sub Committee.
- It would be a shock to close the pub for Redhill which had seen 23 other pubs closed. Mrs O'Doherty indicated that it would be a stab in the heart for Redhill if the pub was closed and pleaded with the Sub Committee not to close the pub.

The Chairman invited questions to the parties and the following points were noted:

In respect of condition 11 (smoking area plans) the licensing authority indicated that it had not yet received the plans that were required to fulfil this condition and asked for an update on the current position.

In response the licence holder's representative confirmed that the plans had been drafted but not yet submitted. There had been confusion as to whether these plans were required by planning as well as licensing and this matter had been dealt with by the brewery. The Sub Committee were assured that this was in hand and the plans would be submitted by the brewery.

The licensing authority's legal representative queried why the plans were being dealt with by the brewery when the condition specifically required the premises Licence holder to submit the plans.

In response the licence holder's representative indicated that there had been a change of licence holder since the March hearing. In March the brewery were the licence holder's which had subsequently passed to Mr Mahoney.

The Sub Committee referred the licence holder to statements made in the evidence that he had applied to be a SIA licence holder so that he could undertake the door supervisor role and asked Mr Mahoney if he had obtained his certificate or 'badge' that authorised him to undertake this role and whether he was registered with SIA.

In response the licence holder's representative indicated that Mr Mahoney had not yet received all the necessary paperwork as there had been confusion about the spelling of his name and that proof of evidence i.e. passport and utility bills had been required.

Mr Mahoney indicated that he had changed addresses this year and that he was awaiting bank statements that verified his current address as the SIA were unhappy with the forms of ID that he had provided for them.

In response to a question from the applicant's legal representative Mr Mahoney indicated that he had thought he could operate as a door supervisor, as evidenced in PC Steven's statement (dated 13th July 2012), however it was clarified that he could not undertake this role until he had received his badge.

In response to questions from the licence holder's representative the Police acknowledged receipt of the Drugs Policy but that they have to take it away and review it before they could offer a view on it which could take approximately 3 weeks.

The police also clarified that they had a preference for the relevant posters to be displayed in frames and properly secured to the walls.

The police confirmed that the level of nightlife activity in Redhill had reduced in the last 12 months including that at the Dog and Duck.

All parties were invited to make closing statements and no new facts were introduced.

The Sub-Committee adjourned to deliberate at 12.20 pm and resumed at 2.19 pm

Decision

The Chairman advised those present that the Sub-Committee had considered the application for a review of the premises licence in respect of the Dog and Duck, Redhill and

RESOLVED:

- (i) to suspend the premises licence for a period of four weeks. This period being chosen as that which was necessary to comply with those conditions which were not complied with at the time of the review hearing; and**

(ii) to remove the Designated Premises Supervisor (DPS)

Reasons for the Decision

1. The Sub Committee had reviewed all the papers contained in the report circulated with the agenda. It paid careful attention to all the submissions made orally during the hearing, by the applicant (Surrey Police), the licence-holder and his representative, and all those members of the public making representations in person or in writing.
2. The Sub Committee noted Police evidence that significant elements of necessary compliance had only taken place since the current police application for review of the licence and that some elements of compliance remained outstanding as at the date of this hearing and considered these failures as proven.
3. The Sub Committee consider that the conditions in place are stringent and offer sufficient support for the licensing objectives if adhered to. The Sub Committee considered carefully whether different or amended conditions were necessary or helpful and considered that they were not. The Sub Committee considered the failure to comply in a timely manner in coming to this conclusion.
4. The Sub Committee was deeply concerned at the lack of clarity or of any expressed concern of the DPS as to the need to comply with licence conditions and specifically where responsibility lay on achieving compliance. The Sub Committee noted the range of excuses given by the DPS for the various acknowledged failures to achieve compliance with licensing conditions and were of the view that the DPS had failed to take hold of the issues to achieve compliance and considered that the DPS was ultimately culpable for the failures in particular since he had also held the licence holder responsibility since 20th April 2012.
5. The Sub Committee considered that the Police had demonstrated to their satisfaction that the Chief Constable's advice relating to the promotion of the crime and disorder licensing objective was persuasive and noted the relevant Home Office guidance as set out in the submission of Counsel for the Chief Constable. In particular the Sub Committee noted the evidence of a lack of understanding of Security Industry Act (SIA) status and role by the DPS on the 13th July 2012.
6. The Sub Committee comprised the same Councillors as at the previous review hearing. They noted their own guidance given to the DPS at the previous hearing and the responses, undertakings and assurances presented by the DPS at the same hearing.

7. The Sub Committee noted that this was a second review in a twelve month period. The reduction in Police notified incidents since the previous review was noted.

8. The Sub Committee noted the concerns of several members of the public that the permanent loss of the premises would have an adverse effect on the local community.

9. The Sub Committee also noted the advice of Police that the review of the Drug Policy provided to the Police shortly before the hearing (required as a condition of the licence) would take around 3 weeks. The Sub Committee also noted that a plan showing the smoking area (required as a condition of the licence) would also take around 3 weeks. The Sub Committee considered that for the protection of the public the premises should not be open whilst these elements were not in place. The period of closure was extended due to the lack of confidence in compliance in a timely manner at the premises.

10. The Sub Committee took into account the Council's own Statement of Licensing Policy, the Guidance issued by the Secretary of State under s.182 of the Licensing Act 2003, the individual merits of the case, Human Rights legislation in particular article 8 and article 1 First Protocol and the rules of natural justice.

11. The Sub Committee considered that the suspension of the premises licence and the removal of the DPS licence on the evidence before them and based on their experience as trained Licensing Sub Committee Members met the licensing objectives.

It was noted that the written decision issued would take precedence over the drafted decision released verbally at the close of the hearing.

The meeting closed at 2.25 p.m.