

## BOROUGH OF REIGATE AND BANSTEAD

### LICENSING SUB-COMMITTEE

Minutes of a meeting of the Licensing Sub-Committee held at the Town Hall, Reigate at 10.02 am on Monday 20 May 2013.

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

45. **APOLOGIES FOR ABSENCE AND RECONSTITUTION OF THE SUB-COMMITTEE**

There were no apologies for absence and membership of the Sub-Committee was as set out in the agenda.

46. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

47. **LICENSING HEARING PROCEDURE NOTE**

**RESOLVED** to note the hearing procedure note which would be followed at the discretion of the Chairman.

48. **REVIEW APPLICATION: FLIRT NIGHTCLUB, CONSORT WAY, HORLEY**

*In attendance:*

*For the applicant (Surrey Police):*

*Mr Murrae Hume*

*Mr David Tapalay*

*For the licence holder:*

*Mr Richard Williams*

*Mr Gray Coe*

*Witnesses for the licence holder:*

*Mrs Caroline Coe*

*Ms Kerry Wilmer*

The Sub Committee considered an application made by Surrey Police for a review of the premises licence held by Flirt Nightclub.

The Sub Committee had previously arranged to hear the application on 21 February, however, at the beginning of the meeting it resolved to adjourn in order to await the outcome of the criminal case then pending against Mr Coe, the Designated Premises Supervisor (DPS).

The papers before the Sub Committee today included a copy of the trial record, and details of the decision taken by Guildford Magistrates Court on 17 April 2013. Mr Coe pleaded guilty to the possession of a prohibited weapon and was fined the sum of £2,000 and ordered to pay costs. It was noted that Mr Coe would face 45 days imprisonment if he defaulted on the fine.

The licensing officer presented the report and, in doing so, advised the Sub

Committee that the licence holder wished to introduce further evidence, both written and recorded, to explain the background to his conviction at the Crown court. Mr Coe had also made a formal request to introduce two witnesses.

Should the Sub Committee be minded to accept the introduction of further material, it would be necessary to listen to the recorded telephone conversations in private as they had been made without the knowledge of one of the speakers.

The Chairman invited the licence holder to set out reasons for allowing the further information to be introduced.

Mr Williams spoke on behalf of Mr Coe and advised that it would not be his intention to dispute the conviction as Mr Coe had pleaded guilty to the charge and it was a fact that he had been fined for possession of a prohibited weapon.

However, there were mitigating circumstances behind his decision to plead guilty which had been taken into account by the trial judge, resulting in his decision to impose a fine on Mr Coe rather than giving a prison sentence.

It was the view of Mr Williams that it would be unreasonable not to allow the introduction of additional material in support of Mr Coe's case. The licensing regulations allowed for evidence to be introduced both before and during the hearing, with the agreement of all parties.

On behalf of Surrey Police, Mr Talalay made representations against the introduction of further material, emphasising that it was not the role of the Sub Committee to look behind the conviction as set out in paragraph 11.25 of the Section 182 Guidance. Surrey Police equally contended that the additional evidence should be given little or no weight because it could not be validated and was both undated and un-named.

In response, Mr Williams asserted that it was not his intention to look behind the decision of the court; but rather to introduce the same mitigating circumstances that were relied upon in court.

*The Sub Committee adjourned at 10.13 am in order to consider the additional evidence and resumed at 10.30 am*

The Chairman advised the parties that the Sub Committee had resolved not to allow the introduction of the additional written evidence because it was undated and inconclusive and, in their view, unreliable.

The Sub Committee would, however, listen to the audio evidence, but this would be in private session at which point the press and public were invited to leave the chamber.

*The press and public, including Mrs Coe and Ms Wilmer, left the meeting at 10.35 am and returned at 10.45 am*

The Sub Committee listened to the audio evidence.

Mr Williams asserted that the recordings supported Mr Coe's contention that

he had been reported to the police for possession of a Taser by the barmaid who he alleged had brought it onto the premises originally.

The Chairman then invited the parties back into the meeting to make their submissions, during which the following points were noted.

**On behalf of the applicant Mr Talalay addressed the Sub Committee.**

- The original review application was brought under section 152 of the Licensing Act 2003, because Mr Coe had been found to be in possession of a Taser gun during a police raid on 31 December 2012.
- Mr Coe pleaded guilty to the charge in court and the facts of the possession were not in dispute.
- The police statements set out in the report provided strong evidence to support the police application for Mr Coe's Designated Premises Supervisor (DPS) licence to be withdrawn.
- When the police visited the club, on 31 December 2012, Mr Coe denied being in possession of any prohibited weapons and also stated that he was not in possession of the keys to the safe in which the Taser, a brass knuckleduster and a ball-bearing gun were found.
- Surrey Police considered its representations in asking for the DPS to be removed were 'reasonable and proportionate' in accordance with paragraph 9.12 of the section 182 Guidance.
- It was a fact that there had been a criminal conviction for possession of a Taser gun.
- It was a fact that, surrounding the seizure of the weapon by the Police, Mr Coe had both disassembled and lied about his ownership of the safe and its contents.
- These facts indicated that Mr Coe had no problem in lying and this was a major concern for the Police.
- Possession of a Taser was a serious offence and Mr Coe's attempts to evade the truth had resulted in a breakdown in trust with the Police.
- Surrey Police understood that the licence holder would be introducing mitigating evidence, however, the Sub Committee was asked only to take account of the facts.

**On behalf of the licence holder Mr Williams addressed the Sub Committee.**

- Mr Coe's possession of the Taser was not in dispute.
- There was, however, mitigating evidence explaining why the Taser was in the safe. This was introduced in court and the judge took it into account, choosing to fine Mr Coe rather than imposing a prison term which was the more usual sentence for the offence.
- Mr Coe is also a personal licence holder and the courts could have chosen to revoke this licence if they had considered it to be warranted.

Mr Williams then put questions to Mr Coe to establish the chronology of events and the following points were noted:

- Mr Coe opened the club on 20 December 2012. He advertised locally for bar staff.
- One young lady he employed was proving herself to be unsatisfactory and she was issued with a warning.

- A few days later the young lady came in with what appeared to be a mobile phone in a sandwich bag and told Mr Coe that it was a Taser.
- Mr Coe confiscated the Taser and put it into his safe with the intention of reporting it to the Police and asking them to collect it.
- The incident book recorded this and had been completed at the time.
- On the Saturday evening Mr and Mrs Coe discussed with the Community Safety Police Officers (CSPO) what they should do with items they found left in the club, including driving licences. The CSPOs said that they would report it and arrange for the Police to collect the items.
- On the morning of New Year's Eve the unsatisfactory barmaid was sacked over the phone, at which point she became abusive.
- It was that evening that the Police raided the club and asked Mr Coe whether he was in possession of an illegal weapon.
- The Police were insistent about opening the safe and Mr Coe panicked, which was why he dissembled.
- It was Mrs Coe who subsequently gave the Police the keys.
- Mr Coe had witnesses to when he confiscated the Taser who were prepared to give evidence in court. The young lady he sacked regretted her part and did not intend giving evidence against him.
- Mr Coe had intended contesting the charges until he was told that there was no defence position for possession of a Taser.
- Mr Coe went into the dock expecting to receive a prison sentence. However, when he explained the mitigating circumstances the judge imposed a fine rather than sending him to prison.
- The club had continued to trade normally since then.
- In respect of the knuckleduster, on 28 December Mr Coe had sent the doormen outside to break up a fight after the club had closed. The Police were called but did not arrive for over an hour.
- When staff went outside to clear up afterwards, they found the knuckleduster which was put into the safe for safekeeping until it could be handed over to the police. The PCSOs were informed of this on the Saturday evening.
- Mr Coe had owned the ball-bearing gun since he was a child and had kept it for sentimental value.
- The Police struck off the charge about the knuckleduster because they accepted that it had been found.
- In response to the Police assertions that Mr Coe had been obstructive, the club was crowded at the time and there was a live act performing. Mr Coe could not remember where he had put the keys to the small safe. He was trying to be co-operative but felt intimidated.
- Mr Coe was keen to support the licensing objectives and he had thought that he was doing the right thing in putting the Taser in the safe.
- Mr Coe was starting a new business in the town and was keen to retain his DPS.

Ms Wilmer was then called as a witness by Mr Williams and the following points were noted.

- Ms Wilmer worked as a barmaid on Thursday, Friday and Saturday evenings.

- She was present when the Taser was handed over by the other barmaid and put into the safe by Mr Coe.

The Chairman then invited the applicant to put questions to the licence holder and witness and the following points were noted.

- Ms Wilmer could not remember the exact date that the sacked barmaid had brought the Taser in but believed it to be the end of December. It was noted that she had originally told the Police it was 20 December, but she could no longer remember the date.
- Mr Coe stated that he had confiscated the Taser on 27 December.
- In response to Mr Talalay's question about why he did not immediately notify the Police, with particular reference to two visits to the club by the Police on 28 December, Mr Coe stated that the police had not visited the club on that date.

*At this point, the applicant sought permission to introduce a police log identifying the occasions upon which police officers had visited the club. The Chairman agreed to this and copies of the record were circulated to those present.*

- Mr Talalay asked why Mr Coe had made no attempt to report the Taser to the Police between 27 and 31 December. Mr Coe responded that this was not true because he had discussed with the PCSOs what he should do with items left behind in the club and had also mentioned confiscated items. The PCSOs said that they would report it to the Police.
- Mr Coe had spoken to Mr Hume when he opened the club, and asked him what he should do if he confiscated drugs on the premises. He was told that he should lock them away and inform the Police who would then collect them. He had done this but it had been at least a couple of weeks before the Police collected them.
- Mr Coe was trying to help the Police wherever he could in providing CCTV images and assisting with any enquiries.
- Mr Talalay returned to his question of why Mr Coe did not inform the police about the Taser. Mr Coe responded that he had informed the PCSOs on 30 December.

Mr Talalay commented that Mr Coe now seemed unclear about whether he had spoken to the PCSOs on 29 or 30 December, before continuing with his questions.

- Mr Coe stated that there had been around 200-300 customers in the club on New Year's Eve, when it was raided by the Police. This was queried by Mr Talalay because the two police witness statements both stated that there had been less than ten customers at the time.
- Mr Coe was asked why he had panicked when the police asked to see the content of his safe, as he had previously stated that he only became aware of the seriousness of having a Taser when he attended court. Mr Coe responded that he had been unnerved by the presence of the armed officers.

In response to questions from Mr Williams, Mr Coe confirmed that he had not been present when police officers visited the club on 28 December. One of the

visits was noted as being at 9 pm and the club did not open until 10 pm. He had met with the police at 9 pm on Christmas Eve but this had been arranged in advance to suit the police officer.

In response to a question from the Sub Committee, Mr Hume stated that he had no record of how many officers had attended the raid on 31 December, but that it was likely to have been some 'half-a-dozen' although he could not be sure.

The Chairman then invited the parties to sum up.

**For the applicant:** Mr Talalay addressed the Sub Committee and the following points were noted.

The conviction was not in question and it only remained to be decided whether there were mitigating circumstances.

Mr Coe did not report possession of the Taser gun between the date he confiscated it and the date of the police seizure on 31 December.

Mr Coe had been inconsistent with dates at the present hearing.

It was the contention of the Police that speaking to the PCSOs in a general manner about what to do with items left behind in the club was not an adequate justification for not properly reporting possession of the Taser gun. Mr Coe had already met the police licensing officer and would have been expected to liaise with him.

Mr Coe had deliberately misled the Police when they asked what was in the safe and his account of how many customers were in the club differed greatly from that of the police witness statements.

Taking account of Mr Coe's assertion that he only became aware of the seriousness of the offence when he attended court, it was difficult to understand why he felt so concerned when visited by the Police on 31 December.

**For the licence holder:** Mr Williams addressed the Sub Committee and the following points were noted.

The Sub Committee had a number of options before it, and could be sure that if the Police believed that Mr Coe had owned the Taser they would be asking to revoke his licence.

The Taser gun did not belong to Mr Coe and it had been put in the safe with the best of intentions, out of the way of the public.

The courts had chosen not to take away Mr Coe's personal licence, which they would have been justified in doing if they felt it was warranted.

Mr Coe had received a lot of adverse publicity from the case and it had been a difficult experience for him from which he had learned a salutary lesson.

The Sub Committee was invited not to revoke Mr Coe's licence and to show

the same leniency as that shown by the courts in accepting the mitigating circumstances.

*The Sub Committee adjourned at 11.48 am  
and resumed at 12.22 pm to give its decision.*

**RESOLVED** that the designated premises supervisor, Mr Gray Coe, be removed from the licence.

### **Reasons for the decision**

1. The Sub Committee:
  - (i) reviewed all the papers contained in the report circulated with the agenda;
  - (ii) paid careful attention to all the submissions made orally during the hearing by the responsible authority (Surrey Police) and the licence holder;
  - (iii) had full regard to the crime and disorder and public safety licensing objectives;
  - (iv) considered that the Police had demonstrated to their satisfaction that their representations relating to the promotion of the crime and disorder and public safety licensing objective was persuasive;
  - (v) took into account the Council's own Statement of Licensing Policy, the section 182 Guidance issued by the Secretary of State, the individual merits of the case, Human Rights legislation and the rules of natural justice;
  - (vi) does not have the power to judge the criminality or otherwise of any issue, as that is a matter for the courts. The Sub Committee's role when determining such a review is, therefore, not to establish guilt or innocence of any individual but rather to ensure the promotion of the crime prevention objective.
2. Where a review follows a conviction it is not for the Sub Committee to attempt to go beyond any finding by the courts. Those findings should be treated as a matter of undisputed evidence before them.
3. The other options before the Sub Committee were not considered appropriate in the circumstances.
4. A Taser gun on the premises is very serious and Mr Coe should have reported it immediately.
5. The Sub Committee recognise that there are several inconsistencies in Mr Coe's evidence.
6. It is the Sub-Committee's view that Mr Coe was not forthcoming with the police upon their arrival on 31 December 2012 and this causes them great concern in respect of his ability to be a designated premises supervisor.

**Note:** This written decision takes precedence over the summarised decision announced at the hearing.

The meeting closed at 12.25pm