

Minutes of the Licensing Sub-Committee 4

Tuesday 23rd February, 2016 at 10.00 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor D Russell (Chair)
 Councillors P Miller and C Perks

Officers:-

R Clark – Principal Solicitor – Resources and Transformation
 Directorate , L Rouse – Licensing Clerk – Place Directorate and
 K Taylor, Democratic Services Officer – Resources and Transformation
 Directorate.

33 Apology for Absence

An apology for absence from the meeting was received on behalf of
 Councillor A Aston.

34 Appointment of Substitute Member

It was reported that Councillor C Perks had been appointed as
 Substitute Member for Councillor A Aston for this meeting of the Sub-
 Committee only.

35 Declarations of Interest

No Member made a declaration of interest in accordance with the
 Members' Code of Conduct.

36 Minutes

Resolved

That the minutes of the meeting of the Sub-Committee held on
 19th January, 2016, be approved as a correct record and signed.

Application for Review of Premises Licence – The Earl of Dudley Arms, Wellington Road, Dudley

A report of the Strategic Director Place was submitted on an application for the review of the premises licence in respect of The Earl of Dudley Arms, Wellington Road, Dudley, following the issue of a Closure Order by Wolverhampton Magistrates Court under Section 80 of the Anti-Social behaviour, Crime and Policing Act 2014, as a result of an application by the West Midlands Police.

Prior to the commencement of the hearing, the Sub-Committee together with Mr I Stebbings (Barrister for the Premises Licence Holder) and Mr C Streeten (Barrister for West Midlands Police) discussed a preliminary issue regarding the validity of the process of consideration of a review of the premises licence following a closure order.

It was reported that the Licensing Section had received the closure order by e-mail on 28th January, 2016 from West Midlands Police that prompted an advertising process for the automatic review of the premises license pursuant to Section 6, therefore the application must be determined within 28 days. It was further noted that Section 182 guidance indicated that the review must be heard within 10 days of receipt of the order however this did not appear to originate in the Licensing Act 2003 or the 2005 Premises License and Club Premises Licence Regulations 2005.

The parties then withdrew from the meeting to enable the Sub-Committee to determine whether the application could be determined.

The Sub-Committee having made their decision invited all parties to return and the Chair then outlined the decision.

Resolved

That the Sub-Committee concludes that the period of 10 days in which to convene a hearing is contained in the guidance, and is not a statutory provision, and does not make sense in line with the publicity provisions. It therefore concludes that the application has been listed correctly and in accordance with the Licensing Act and proceeds to hear and determine the review today.

The following persons attended the meeting in respect of this application:-

Mr I Stebbings – Barrister on behalf of Mr Hines (Earl of Dudley)
Mr O Hines – Premises Licence Holder (Earl of Dudley)
Mr G Thompson – Supporter
Mrs M Blake – Supporter
Mrs T Perkins – Supporter
Mr R Cole – Supporter
Mr W Jarrett – Supporter

Mr C Streeten – Barrister on behalf of West Midlands Police
DCI C Hanson – West Midlands Police
PS A Hands – West Midlands Police
PC J Preston – West Midlands Police
PC A Baldwin – West Midlands Police
Ms K Turley – West Midlands Police
Sergeant J Jones – West Midlands Police
Mr B Hughes, Licensing Enforcement Officer

Mrs S Young – Observer
Mr R Gutteridge – Express and Star

Following introductions, the Interim Licensing Manager presented the report on behalf of the Council.

Mr Streeten then presented his case on behalf of West Midlands Police, and in doing so stated that the only appropriate step was revocation of the premises licence on the grounds of the history of crime and violence at the premises, and the poor management of the premises in particular Mr Hines failure or delays during investigations regarding CCTV data and should the premises be re-opened following the closure order he anticipated that it would be a short-time before a serious crime occurred.

PS Hands referred to his witness statement, which had been circulated to all Members prior to the hearing, with particular reference to thirteen crime reports in respect of the premises between December, 2013 and December, 2015.

In responding to a question from Mr Streeten, PS Hands reported that the crime and violence incidents mainly involved people that had been customers at the premises, and that Mr Hines had been unwilling to provide statements and CCTV data and was not pro-active in protecting the welfare and safety of his customers.

In responding to a number of questions asked by Mr Stebbings, PS Hands confirmed that he had visited the premises once following the closure order and had collated the crime reports and incidents from police logs. He also stated that although Mr Hines had submitted CCTV data in regard of an incident in January, 2015, the CCTV footage was not in a viewable format and following investigations it was evident that the CCTV had not been recorded. PS Hands further stated that it would be reasonable for security to be present during the week depending on the number of customers.

Mr Stebbings reported that the majority of the incidents had occurred in the car park to the premises and that Mr Hines would be attending a court case in April, 2016 as a witness to give evidence.

At this juncture, particular reference was made to the incident in December, 2015 in that Mr Hines had provided the contact details of the victim to West Midlands Police, and that in view of the CCTV unit being seized by Police, the DY Licensing confirmed that no action would be taken and that Mr Hines had purchased a temporary unit in compliance with a condition of his premises licence.

PS Hands confirmed that he was not present at a Licensing Strategy meeting held in April, 2015.

Mr Streeten asked a number of questions to DCI Hanson, and in responding it was stated that this had been the first closure order that DCI Hanson had been involved with and that it was clear that there was a prolonged history of violence associated to the premises. He also stated that there had been convincing intelligence that the premises had a stronghold gang influence, based on the convictions and arrests and links to Class A drugs and that members of the local gang were known to attend the premises.

DCI Hanson further stated that he believed Mr Hines to have a lack of control at the premises and was incapable of managing the premises robustly, and that throughout his 24 years of experience he could not recall another premises that posed a danger to the public, and raised concerns that a serious incident could occur should the premises remain open, and therefore requested that the premises licence be revoked.

In responding to questions asked by Mr Streeten, DCI Hanson stated that he did not believe that amendments to the premises licence such as decreasing the licensing hours and removing Mr Hines as Designated Premises Supervisor would mitigate the risk posed to the public.

In responding to a number of questions asked by Mr Stebbings, DCI Hanson confirmed that he was not present at a Licensing Strategy meeting in April, 2015, and that he had visited the premises once following the closure order.

Mr Stebbings referred to a 'dispatch system' placed on premises in order for Police Officers to attend a premise immediately if notified of a disturbance. DCI Hanson confirmed that it was unlikely for this to have been placed on public houses, as these usually related to dwellings.

At this juncture, Mr Streeten made an application in accordance with Regulation 14 of the Hearing Regulations, for the public and press to be excluded for the next part of the meeting. The application was granted by the Sub-Committee and supported by Mr Stebbings. All members of the public and press then withdrew from the meeting.

During the exclusion of the press and public, PC Baldwin, PC J Preston and Mr Stebbings on behalf of Mr Hines provided detailed accounts of the strategy meeting in April 2015 that had been arranged following a request by Mr Hines in order to discuss escalating incidents. It was noted that following the strategy meeting, PC Baldwin had undertaken two walkthroughs of the premises, and although more attention to the premises would have been preferred this was limited due to staffing shortages and reduction in resources.

Following further discussion and a brief adjournment all parties, including the press and public, returned to the meeting.

Mr Jarrett then outlined his support to Mr Hines in that he had visited the premises for fourteen years particularly on a Friday and Saturday to play dominoes and confirmed that he had not witnessed any incidents at the premises or had been aware of the gang reputation until following the closure order.

Mrs Blake in her support stated that she had visited the premises on a number of occasions and referred to the community events that had been arranged by Mr Hines and raised concerns that if the premises did not re-open then there would be no-where for the community to attend.

At this juncture, Mr Stebbings made an application in accordance with Regulation 14 of the Hearing Regulations, for the public and press to be excluded for the next part of the meeting. The application was granted by the Sub-Committee and supported by Mr Streeten. All members of the public and press then withdrew from the meeting.

During the exclusion of the press and public, Mr Stebbings referred to the witness statement of Mr Hines and asked a number of questions in respect of the incidents that had been summarised by PS Hands earlier in the meeting. It was noted that following the closure order, Mr Hines had completed phoenix training and a Security Industry Authority (SIA) approved up-skilling course, and agreed to provide the West Midlands Police with a dongle with downloaded CCTV on request and inform his employees of the pass-code to access the system. He also referred to his good working relationship with PC Baldwin. Mr Hines responded to a number of questions asked by Mr Streeten and Members of the Sub-Committee, following which he requested an opportunity to improve his business and referred to the options available to the Sub-Committee to review the premises licence in the future.

In summing up, Mr Streeten on behalf of West Midlands Police, stated that on the balance of probability the only steps to ensure the safety of the public and prevention of crime and disorder was for the premises licence to be revoked, which had been supported by those in attendance. He acknowledged that the premises provided a valuable community asset, however the potential risk to the safety of the customers were extremely serious.

In summing up, Mr Stebbings on behalf of Mr Hines, stated that there were a number of options that could be taken by the Sub-Committee and requested that the premises licence be suspended. He referred to the incidents summarised at the meeting, in particular that there was no evidence to support as the representatives of the Police in attendance today had not visited the premises prior to the closure order, and the accusations surrounding the acceptance of a local gang attending the premises was denied by Mr Hines. He also stated that Mr Hines was prepared to amend his conditions of licence and cooperate with authorities to allow him to maintain his business.

The parties then withdrew from the meeting to enable the Sub-Committee to determine the application.

The Sub-Committee having made their decision invited the parties to return and the Chair then outlined the decision.

Resolved

That, following careful consideration of the information contained in the report submitted, and as reported at the meeting, the premises licence in respect of The Earl of Dudley Arms, Wellington Road, Dudley, be revoked.

Reasons for Decision

This is a review of a premises license, following a closure order made initially in Wolverhampton Magistrates Court in December, 2015, and then upheld an appeal in Wolverhampton Crown Court on 8th January, 2016. Dudley MBC Licensing office states that it received the closure order by e-mail on 28th January, 2016 from West Midlands Police, which triggered an advertising process for the automatic review of the premises license pursuant to Section 67. The application must be determined within 28 days. The Section 182 guidance indicates that the review must be heard within 10 days of receipt of the order, but this period does not appear to originate in the licensing act or the 2005 Premises License and Club Premises Licence Regulations 2005. The Sub-Committee therefore considers the Section 182 guidance, but this 10 day period does not appear to allow the licensing authority an opportunity to conduct an advertisement process or allow for representations to be made. In the light of the publicity for the review, a number of local pub users had made representations supporting the license holder, and that have attended today. They broadly support the re-opening of the pub as a community resource for all ages.

The Sub-Committee accepts that the licensing authority did not receive the closure order until 28th January. This triggered the automatic review process. The review does have to be determined within 28 days, and today falls within 28 days from 28th January. The Sub-Committee concludes that the period of 10 days in which to convene a hearing is contained in the guidance, and is not a statutory provision, and does not make sense in line with the publicity provisions. It therefore concludes that the application has been listed correctly and in accordance with the Licensing Act and proceeds to hear and determine the review today.

The principal licensing objective in issue today is that of the prevention of crime and disorder. The police have presented a history of crime in the public house and significantly in the car park outside these premises, since at least 2013. The incidents have included stabbings to the body and face, some criminal damage, the taking of a motor bike from the car park which concluded with a threatening confrontation and some incidents of lesser violence.

The police evidence places a particular emphasis upon the poor management of the premises over time, delayed reporting to the police of significant incidents and significant delay in passing or allowing access to CCTV of specific incidents.

Mr Hines denies most of the delay in reporting incidents, places great emphasis on him calling a strategy meeting in April 2015 in order to discuss escalating incidents, and states that he will now provide the West Midlands Police with a dongle with downloaded CCTV on request. He therefore asks the Sub-Committee to take a less draconian step than revocation, which the West Midlands Police recommend. He submits that the Sub-Committee could suspend to allow Mr Hines time to put his CCTV compliance in order and demonstrate his cooperation with authorities. He asks for a last chance.

The Sub-Committee however, is not satisfied that Mr Hines has taken the criminal activity committed on his premises seriously and has not acted decisively and expeditiously to address it. In particular, it finds that since 2013, he has failed on most occasions to deliver to the police CCTV recordings of key events in a timely manner, and had not cooperated with the police requests, but made the process of reporting and investigation prolonged and difficult. It is also concerned that the level of crime is particularly serious, and that for there to be two knife incidents and other violent incidents around a single premises in such a short time, is extremely serious. These appear to be minimised by Mr Hines.

The Sub-Committee finds that the history and nature of the incidents, and the association with a local gang, has now given these premises a name and reputation, which has escalated beyond the ability of Mr Hines to manage and control. He asks for a last chance but the Sub-Committee concludes that he should have taken some decisive action well before April 2015, and that provision of CCTV on request would have made a real difference to the persons committing offences on the wider premises. The situation has now got out of his control to manage, and further conditions, or the removal of the Designated Premises Supervisor, are now insufficient to overcome this reputation. Suspension of the premises licence is also too little too late, and the Sub-Committee will not accept that the real risk of a death on these premises is a risk it can take. For these reasons the Sub-Committee takes the step of revoking the premises licence.

Any party has a period of 21 days in which to appeal this decision from the date of receipt.

A report of the Strategic Director Place was submitted on an application for the review of the premises licence by the addition of conditions following the Magistrates Court Appeal hearing in respect of Liquor Stop, 65 High Street, Brierley Hill.

The following persons attended the meeting in respect of this application:-

Mr N Singh – Premises Licence Holder and Designated Premises Supervisor (Liquor Stop)
Mr G Wintrip – Trading Standards
PC A Baldwin – West Midlands Police

Following introductions, the Interim Licensing Manager presented the report on behalf of the Council.

Mr Wintrip gave a summary of the review application and the representations submitted by Public Health during the July, 2015 meeting, which also included the nine conditions to be imposed to the premises licence.

PC Baldwin also confirmed that having reviewed the police systems, there had been no calls of service to the premises, and it was evident that Mr Singh had implemented steps as reported.

Mr Singh then presented his case and in doing so outlined the changes made to the premises including, further training for himself and his family in case of emergencies, installation of CCTV and a refusals register, and displaying appropriate literature.

In responding to a question Mr Singh confirmed that he was in agreement with the conditions suggested by Trading Standards.

Having made their decision the Chair then outlined the decision.

Resolved

That, following careful consideration of the information contained in the report submitted, and as reported at the meeting, the following nine conditions be applied to the premises licence in respect of Liquor Stop, 65 High Street, Brierley Hill :-

1. A written Proof of Age Policy (Challenge 25) is to be put in force, which all staff authorised to sell alcohol will be trained in and adhere to. Valid proof of identification will only include passport, photographic driving licence or a Proof of Age standards scheme (PASS) proof of age card such as Citizen card. No other form of identification shall be accepted.
2. A4 notices to be displayed on the door to the premises and near the point of sale stating that it is an offence to buy alcohol for persons under the age of 18.
3. A Register of Refusals of Sale of Alcohol which indicates the date, time and reason for refusal will be operated and maintained at the premises. The Premises Licence Holder shall review the book once a week ensuring it is completed and up-to-date. The Premises Licence Holder will sign the book each time it is checked. This book shall be made available for inspection by an officer of any responsible authority.
4. CCTV to be in place at the premises and to be recording at all times when the premises are open for licensable activity, to the specifications of the West Midlands Police Crime Reduction Officer so that the alcohol display area and the point of sale area can be viewed. All images are to be recorded and kept for a minimum of 28 days and made available to any responsible authority upon request immediately, and all staff are to be trained and able to operate and download CCTV. The hard drive is to be locked but readily accessible to staff.
5. The Premises Licence Holder will take proportionate steps to review the premises CCTV on a weekly basis in order to identify persons under the age of 18 who are attempting to buy alcohol or persons over the age 18 buying on their behalf. A record of these checks shall be maintained and be available for inspection upon request by an officer of any responsible authority.
6. All persons engaged to sell alcohol must complete a training programme, which includes a written test to verify the competency of that person prior to them being authorised to sell alcohol.
7. The premises licence holder shall ensure that monthly reviews are conducted with any persons authorised to sell alcohol to reinforce training, promote best practice and policy. ~~The monthly reviews will be recorded in writing.~~

8. A file shall be maintained at the premises for each person authorised to sell alcohol (with proof of identity which will be a copy of passport and/or driving licence). This file shall contain all training records for each person along with copies of monthly reviews as stated in point 7. This file shall be made available for inspection by any officer from a responsible authority upon request.
9. Any person who is suspected of purchasing alcohol for any person under age, shall be refused service.

Reasons for Decision

This was a review application (dated 29th April 2015) in which the premises license was revoked. The revocation was appealed, and the Magistrates court upheld the appeal, primarily on the basis of actions taken and improvements made by Mr N Singh, between the date of the revocation on 7th July, 2015 and the Magistrates Court appeal hearing on 17th December, 2015. There had been no further incidents of concern in that time. The court remitted the case back to the Licensing Sub-Committee for it to consider the attachment of necessary conditions to the premises license.

Mr N Singh attended the Committee in person today. He confirmed that he had completed all of the necessary training for himself and family (including training records) and maintained regular contact with trading standards. He had installed CCTV, put in a refusals register and used it, had put up appropriate posters about challenge 25 and sale of age restricted products.

The police today confirmed that there had been no further issues of concern since the hearing in the Magistrates Court.

Trading Standards today recommended to the committee that in order to address the original concerns, it should consider taking the step of imposing conditions upon the premises license. The committee finds that the 9 conditions recommended by trading standards are necessary to ensure that the licensing objectives are complied with. These 9 conditions are imposed upon the premises license today.

All parties have 21 days in which to appeal this decision from the date of receipt.

It was noted that this item had been withdrawn prior to the meeting.

The meeting ended at 4.00 pm

CHAIR